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HEARING
SENATE RULES COMMITTEE

STATE OF CALIFORNIA

Legislative

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVER, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETROS

STAFF PRESENT

CLIFF BEGG, Executive Officer

STATE CAPITOL

PAT WEBB, Committee Secretary

ROOM 112

PICK ROLLENS, Consultant on Bill Referrals

SACRAMENTO, CALIFORNIA

WALLY NICHOL, Consultant on Appointments

ALSO PRESENT

DAVID E. BROWN, Member
Board of Prison Terms

CLARENCE A. TENDON, WEDNESDAY, MARCH 2, 1988
California Youth Authority

1:45 P.M.

ROBERT C. THREASSEN, Director and Adjutant General,
State Military Forces

SENATOR LEROY GREENE

NORMAN PHILLIPS
Pacific Bell
Sacramento

GEORGE DEAN
Sacramento Urban League

B. V. COLLINS
Hickory Parkbody
Sacramento

CELESTE KING

Reported by: Brigadier General
State Military Reserve

Evelyn Mizak
Shorthand Reporter

AL SAVASTA
Atlantic Richfield
Dallas, Texas

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman
 SENATOR WILLIAM CRAVEN, Vice Chairman
 SENATOR JIM ELLIS
 SENATOR HENRY MELLO
 SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer
 PAT WEBB, Committee Secretary
 RICK ROLLENS, Consultant on Bill Referrals
 NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

DAVID E. BROWN, Member
 Board of Prison Terms
 CLARENCE A. TERHUNE, Director
 California Youth Authority
 ROBERT C. THRASHER, Director and Adjutant General
 State Military Forces
 SENATOR LEROY GREENE
 NORMAN PHILLIPS
 Pacific Bell
 Sacramento
 GEORGE DEAN
 Sacramento Urban League
 B. T. COLLINS
 Kidder Peabody
 Sacramento
 CELESTE KING
 Businessman/Brigadier General
 State Military Reserve
 Los Angeles
 AL ZAPANTA
 Atlantic Richfield
 Dallas, Texas

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Deputy Assistant Secretary of the Air Force
Washington, D.C.

MAJOR GENERAL DAN HELIX
6th Army

TONI MINASIAN JORDAN, Widow
Air Force Pilot

BILLIE MINASIAN, Mother of Ms. Jordan

BRIDGADIER GENERAL EDWARD AGUIAR, Retired

MAJOR GENERAL RAY HEBRANK, Retired

MICK McCOY
Airline Pilot
Former Interceptor Wing Fighter

JOHN DOUGHERTY, Lt. Colonel
Commander, 170th MP Detachment
Sacramento County District Attorney

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California National Guard

BRIGADIER GENERAL JOHN McMERTY
Deputy Director
Air National Guard

COLONEL STUART A. BRODY
Staff Judge Advocate
California Military Department

JAMES L. ASHFORD, Principal Deputy
Legislative Counsel

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Sacramento

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GEORGE DEAN, President

Sacramento Urban League

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B. T. COLLINS

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P R O C E E D I N G S

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1
2
3 SENATOR MELLO: Mr. Chairman, I suggest we start with
4 Mr. Brown and Mr. Terhune.

5 SENATOR CRAVEN: I was going to suggest that we do that,
6 thank you.

7 Let's go to the Governor's Appointees appearing today
8 and begin with David E. Brown, Member, Board of Prison Terms.

9 Mr. Brown, would you please tell the Members of the
10 Rules Committee why you feel you are qualified for this very
11 important position?

12 MR. BROWN: Thank you, Mr. Chairman and Committee
13 Members.

14 I welcome the opportunity to appear before this
15 distinguished Committee today.

16 With regards to my qualification to serve as a
17 Commissioner on the Board of Prison Terms, I believe my extensive
18 experience in Corrections, that spans a period of over 25 years
19 and includes assignments in practically every uniform position in
20 the Department of Corrections and the Board of Prison Terms,
21 qualifies me for this position.

22 I began my career as a correctional officer at San
23 Quentin State Prison. I promoted through the ranks from
24 Correctional Officer to Correctional Sergeant, Correctional
25 Lieutenant, Correctional Captain, and Program Administrator.

26 I've also worked on the streets of San Francisco as a
27 parole agent and a parole agent supervisor, and in several staff
28

1 positions with the Parole Division of the Department of
2 Corrections.

3 Immediately prior to my appointment by the Governor, I
4 served as Chief Counsel for the Board of Prison Terms for five
5 years. Prior to that assignment, I served as Staff Counsel for
6 the Board of Prison Terms, Staff Counsel for the Department of
7 Corrections, Hearing Representative for the Board of Prison
8 Terms, and as Assistant Chief, Institutional Services, for the
9 Department of Corrections.

10 While serving as Counsel for the Board of Prison Terms
11 and the Department of Corrections, I had the opportunity to draft
12 many hearing procedures which are relevant to my present duties
13 as a Commissioner. For example, in response to complaints from
14 sheriffs throughout the state and prison officials that parole
15 violators were not subject to punishment for their in-custody
16 misconduct while confined for parole violation terms, I drafted a
17 procedure which was later codified into law which provides for
18 parole violators who engage in acts of misconduct while in
19 custody to be punished to the same extent as other prison
20 inmates.

21 I drafted hearing procedures to implement the State's
22 recently enacted Mentally Disordered Offender Statute. As
23 Counsel for the Department of Corrections, I was responsible for
24 drafting the Department's disciplinary hearing procedures,
25 hearing procedures for involuntary placement of prisoners in
26 Administrative Segregation Units, and hearing procedures for the
27 involuntary transfer of prisoners for mental health treatment.
28

1 During the nine months since my appointment as a
2 Commissioner, I have found my training as a lawyer and my
3 specific knowledge of the regulations, procedures, and laws that
4 govern the function of the Board of Prison Terms, to be
5 invaluable assets in discharging my duties with the Board of
6 Prison Terms.

7 I believe the foregoing experiences that I have cited
8 qualify me to serve as a Commissioner for the Board of Prison
9 Terms.

10 Thank you.

11 SENATOR CRAVEN: Thank you, Mr. Brown.

12 Any questions? Senator Mello.

13 SENATOR MELLO: I have a couple questions based on what
14 I see as some problems now developing from our Determinate
15 Sentencing Law, which I believe is working quite well, having
16 gone from Indeterminate Sentencing now to Determinate Sentencing
17 with only a few exceptions.

18 There are several bills being introduced this year,
19 including myself, Senator Boatwright, Senator Kopp, and I believe
20 some over on the Assembly side that would try to change the
21 system somewhat in that these persons who are known to be
22 extremely dangerous and have threatened both witnesses and
23 persons in the vicinity from which they were committed, under
24 current law we have no option but to release them and put them on
25 probation with a certain due date.

26 I'm talking about: Larry Singleton; Summer Halter,
27 which came out of Santa Cruz County, who was recently put on
28

1 parole; Archie Fain; and another person that came out of a mental
2 institution, Charles Christian Jones.

3 What is your position on such legislation that might
4 give the Governor an override authority based on a hearing and
5 facts to hold somebody for an additional period of time whom
6 evidence has shown is dangerous either to himself or to people
7 within the community in which they are to be released.

8 MR. BROWN: Senator Mello, my position is that I support
9 any change in the law that would provide protection of the public
10 from dangerous, violent criminals who would pose a danger upon
11 the time of their release from prison on a determinate term. And
12 I would support any change that would address that issue.

13 SENATOR MELLO: From your own experience, what do you
14 feel would be the administrative means by which we could
15 accomplish this?

16 MR. BROWN: You've mentioned two aspects of it. One,
17 keeping prisoners in custody for a longer period of time, and
18 also preventing them from returning to certain locations.

19 I think that if a prisoner acts or makes an act --
20 exhibits any behavior that indicates that he's a threat, he or
21 she is a threat, at the time that they are due to be released, I
22 think then that the public has a right to confine them in the
23 institutions.

24 Presently we have a Mentally Disordered Offender Statute
25 which address the issue to some extent, but it doesn't totally
26 address the problem because it has too many specific requirements
27 that the prisoner has to meet before they can be retained.
28

1 I think maybe if we -- if that was changed to provide
2 for only as long as the person poses a danger to himself or
3 others at the time that they are released that they could be
4 maintained -- retained in prison, that would solve the problem.

5 SENATOR MELLO: What's your position on the current law
6 which requires that they paroled out to the committing county
7 with some minor exceptions? I think what this does, it places a
8 person who may be dangerous or violent back into the area in
9 which they have knowledge of people, rather than maybe to some
10 other area or even out of state, where they perhaps would have a
11 better chance of not recommitting certain crimes again.

12 MR. BROWN: I think that the present law generally
13 provides for the return to the county of commitment unless there
14 are circumstances which would indicate the return to the county
15 of commitment would not be appropriate.

16 The problem I see is that you have to return the
17 prisoners to some county. And I think you have to avoid any law
18 that will allow or result in a prisoner being banished from the
19 state. So long as there's some basis for the prison being
20 returned to another county other than the county of commitment,
21 under the present law I think that that is permissible.

22 SENATOR MELLO: Thank you very much.

23 SENATOR CRAVEN: Thank you, Senator Mello.

24 Senator Ellis.

25 SENATOR ELLIS: If there's no opposition, I would move
26 this confirmation.

27 SENATOR CRAVEN: Let me make a call.
28

1 Is there anyone who wishes to speak in favor? If you
2 do, just raise your hand and it will suffice. I see some.

3 Is there anyone who wishes to speak in opposition to
4 this nominee's appointment? There appears to be none.

5 Senator Ellis, we're ready for your motion.

6 SENATOR ELLIS: I'd move the confirmation.

7 SENATOR CRAVEN: Very well, no further comment, call the
8 roll, please.

9 SECRETARY WEBB: Senator Ellis.

10 SENATOR ELLIS: Aye.

11 SECRETARY WEBB: Senator Mello.

12 SENATOR MELLO: Aye.

13 SECRETARY WEBB: Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Senator Craven.

16 SENATOR CRAVEN: Aye.

17 SECRETARY WEBB: Senator Roberti.

18 SENATOR CRAVEN: The vote is four-zero; recommendation
19 to the Floor.

20 Congratulations, Mr. Brown.

21 MR. BROWN: Thank you.

22 SENATOR CRAVEN: You're entirely welcome, sir. Thank
23 you.

24 We are at a point here now where we can go back.
25 Senator Nielsen has indicated the fact that he would have no
26 objection to moving ahead on his issue, which is a bill.
27
28

(Thereupon the Rules Committee
considered legislative matters.)

CHAIRMAN ROBERTI: We will now take up Mr. Clarence
Terhune, Director of the Youth Authority.

Mr. Terhune, we'll ask you what we ask all the
gubernatorial appointees, and that is why you feel you're
qualified to assume this position?

MR. TERHUNE: Thank you, Senator, Members of the
Committee.

I started my education not too far from here in Placer
County. I went through the school system there. In 1950, I
enlisted in the service and went off, and I came back a couple
years later at which time I used the G.I. bill to go to San Jose
State College. Got my B.A. Degree and then moved on from there
to the University of California, where I received a Master's
Degree in Social Work.

Immediately following graduation from school, I started
with the Youth Authority in October, 1955. My experience with
the Youth Authority started with the Parole Services branch,
where I started as a field parole agent, worked up through middle
management, and eventually became the Deputy Director of that,
the Department's parole operation.

Another set of experiences I had started in the
institution part of the Department's operation. I worked in
middle management positions, and in the year 1963 I was given my
first management position. Two years later I was appointed
Superintendent of my first institution. Following that, I've

1 been -- I was Superintendent of four institutions, one of which I
2 was Superintendent twice. On two occasions I was Deputy Director
3 in charge of Institutional Operations.

4 In terms of program experience, my first opportunity was
5 to work with the second Director of the Youth Authority, Heman
6 Stark. I worked closely with all of the Directors of the Youth
7 Authority and knew the first Director personally.

8 My first major job in Headquarters was to draw up the
9 policy and procedures for the Construction Subsidy Program, which
10 has resulted in the construction of probably about three-quarters
11 of the county beds that are operated locally.

12 I've been involved in the Classification System
13 development within the Youth Authority, including the I Level
14 classification, which took on a national prominence.

15 I reorganized two major institutions. I finished
16 construction and programming of one institution, and indirectly
17 was involved in the reorganization of one of our third major
18 facilities.

19 I've also been involved in the development of the first
20 Treatment Team Program in the Youth Authority, which also
21 included development of the Youth Counselor series. And to me,
22 the Youth Counselor series was the opportunity where our
23 custodial staff could do, in addition to their security duties,
24 counseling the programming in our institutions.

25 I've also been involved in developing and implementing
26 the first prevention programs in the Youth Authority, which some
27 of the Members of the Committee have had an opportunity to take a
28 look at.

1 I implemented the first Gang Project in East L.A. It
2 was a project that has worked on, as the item you had just before
3 this, the removal of graffiti in the East L.A. area. That
4 program was started in 1974; it's continued. It was a program
5 that was focused on an area that had the highest homicide rate in
6 L.A. County. In the last two years there has not been a homicide
7 in that area. And frankly, one of the indications of gang
8 activities is the absence of graffiti in that particular area.

9 One other area that I feel proud about is that I brought
10 into the institutional operation a Crisis Intervention Program.
11 We borrowed this from law enforcement. It was a way to defuse
12 situations that would result otherwise in staff being injured and
13 possibly wards being injured.

14 In closing, I've been in the Department for 33 years; 25
15 years of that has been as a manager with a fairly high
16 visibility, both professionally and personally. My decisions
17 sometimes were controversial but they were viewed, and I can say,
18 I think, at this point that I still have the respect of line
19 correctional staff, and particularly correctional peace officers.

20 And probably most important to me, I have the respect
21 and loyalty of my wife of 38 years.

22 And I guess the other thing is, I set fairly high
23 expectations for my staff, but I've tried and I will continue to
24 try to maintain that same measure of my own performance.

25 Thank you very much for letting me speak.

26 CHAIRMAN ROBERTI: Thank you very much, Mr. Terhune.

27 Any questions? Senator Petris.
28

1 SENATOR PETRIS: Is your wife here today?

2 MR. TERHUNE: No, she isn't.

3 (Laughter.)

4 MR. TERHUNE: She has a lot of faith in me.

5 SENATOR PETRIS: She just lost a couple of loyalty
6 points there.

7 (Laughter.)

8 SENATOR PETRIS: I need to ask you some questions that
9 affect my own district.

10 MR. TERHUNE: Certainly.

11 SENATOR PETRIS: I carried a bill that would try to get
12 more money to the counties for the camps. I know the Youth
13 Authority doesn't operate camps; the counties do. We didn't make
14 it with the bill, and the county was pleading for more money, and
15 we were trying to divert some money from the Department, you
16 know, into the camps. We didn't make it, so their camps closed
17 down.

18 Can you give us some help on your view of the camp
19 program, and whether there's a flaw somewhere in the law or the
20 budgeting, so that we can find a way to reopen the camps?

21 Assuming that you favor the camp program and you think
22 it's okay. If you don't think so, I need to know that, too.

23 MR. TERHUNE: As I mentioned, Senator, my first
24 assignment was to help and result in the development of those
25 camps, including the senior and the junior camp, I believe, in
26 Alameda County.

1 In terms of the Juvenile Justice System, I don't think
2 you can touch one part of it without affecting another. Right
3 now, we have 4,131 county ranch and camp beds out there.

4 If those beds closed, it would certainly have an effect
5 on the Youth Authority population. It would also certainly have
6 an effect upon the public. If those young people didn't come
7 into our system, they'd probably be put on the streets, one of
8 the things that does concern me, unless local probation has the
9 resources to pick up and provide adequate services to those kids
10 that are put out on the street. If the camps do close, it could
11 affect public safety; it could affect our population.

12 SENATOR PETRIS: Most counties don't have enough
13 resources to cover that anyway, do they?

14 MR. TERHUNE: They don't, no. Probation caseloads are
15 certainly, as you well know, they are up.

16 Okay, on the other side, the last five years we've
17 actually netted out an increase of about 270 camp/ranch beds. On
18 the other side, the last two years I think we netted out a loss
19 of about 70. So whether the camps are going to close or not, I
20 don't know. It's very possible.

21 And as I said before, if they do, it's going to have an
22 impact and something that has to be dealt with.

23 I am meeting with the Chief Probation Officers. We've
24 had two meetings to take a look, to see what the system, maybe,
25 should look like. I do believe there should be a balanced State
26 and local system. I think we can do something at the State
27 level. I certainly think the counties can do something.

28

1 I think the deeper a person penetrates into the system,
2 and the Youth Authority should be the last resort to the Juvenile
3 Court system, and that's what I stand for, and that's what I --

4 SENATOR PETRIS: Well, that's really what I'm driving
5 at.

6 MR. TERHUNE: Yes, if you can find ways to keep them out
7 of our system, great. We have enough business to keep us busy
8 right now, and --

9 SENATOR PETRIS: I'm sure you're not competing for
10 clients.

11 Well, I would appreciate it in your capacity if you
12 could keep probing into that and see what restructuring might be
13 needed. I think it's a terrible state of affairs if we see this
14 develop into a trend and have other counties lose their camps
15 around this state. I hope it stops where it started, and
16 hopefully we can get them reopened.

17 MR. TERHUNE: I talked with the Chief Probation Officer,
18 Paul Green, this morning. I know he's retiring, and he's been a
19 staunch advocate for keeping those camps open at all costs.

20 SENATOR PETRIS: Well, they did very well. The
21 statistics we had in presenting the bill on their success ratio
22 and so forth, you know, they were doing a good job. It's just no
23 money.

24 There's another program that's done by a volunteer group
25 for women, Women with Mothers, that's operating in Oakland. Are
26 you familiar with that?

27 MR. TERHUNE: Yes, sir.
28

1 SENATOR PETRIS: Is that a good program?

2 MR. TERHUNE: From what I can see of it, I don't know.

3 I haven't seen the program. I do know the people that are
4 involved in it: Pat Marone, Sister Mary. And they're quality
5 people that really believe in what they're doing and that there's
6 a need. They've been to our facilities; they've interviewed, I
7 think, about 27 young women that they feel qualify. They find
8 about 17 that they think that we could maybe work into that
9 program.

10 We signed a contract. The beds should open up
11 April 1st, and we'll have three beds. And if they work out, God
12 willing, we can maybe expand it.

13 But there certainly is a need, and we're committed to
14 trying it. Whether it's going to work or not, I don't know, but
15 there is a need.

16 SENATOR PETRIS: As a strong supporter of the program,
17 I'm hoping it works, too. I'd appreciate from time to time some
18 kind of feedback from where you sit.

19 MR. TERHUNE: Guaranteed.

20 SENATOR PETRIS: Sometimes those of us at home don't see
21 the full picture.

22 I'm interested in your comment on the lack of any
23 murders in the last two years in that gang East L.A. area. I
24 don't understand the correlation between the graffiti and the
25 violence.

26 Is the graffiti used as some kind of a code system?
27
28

1 MR. TERHUNE: It's indications of the level of gang
2 activity in that area. Essentially it's just throwing up
3 challenges: they're there; somebody's going to challenge them;
4 they're going to put up their placard, their marks, on the
5 graffiti.

6 If you can keep those kinds of challenges down, it's an
7 indication that there's no great need to mark out your turf.

8 SENATOR PETRIS: So it is some kind of a code.

9 MR. TERHUNE: Yeah, it certainly is, yeah.

10 SENATOR PETRIS: It's like the lion marking the four
11 corners of -- I won't say how -- but the lion marks the four
12 corners.

13 (Laughter.)

14 MR. TERHUNE: I was going to use that one, but I decided
15 I'd better not.

16 SENATOR PETRIS: What is your assessment of the
17 continuation of that success rate? Do you see it keeping up or
18 is this a fluke?

19 MR. TERHUNE: I don't know. I think if you've been
20 reading the paper, Los Angeles County the last couple of weeks is
21 -- well the L.A. murder rate so far this year is three-fold what
22 it was last year. It was up, and the big increase seems to be
23 drug and gang activity.

24 I hope it holds together. We're expanding. We've
25 gotten some money to expand our catchment area in East L.A. a
26 little bit broader.

1 Whether we can find the people that have the skills that
2 can really intervene and negotiate between these various gang
3 members is going to be what it takes.

4 SENATOR PETRIS: It's not easy, I guess.

5 One, of course, of the main reasons I asked about that
6 is to see how it would apply to places in my area, and notably
7 east Oakland. We've had a terrible series of killings, most of
8 them drug-related, drug and gang. And if you see some hope for a
9 continuation of this, I'd like to have you tackle it in my area.

10 Everybody in the world is trying, the federal people and
11 the county people and the city people and the State people.
12 There was a headline in the local newspaper just this past week
13 saying, "Oakland's Losing the War," in spite of the additional
14 resources we've thrown into it.

15 MR. TERHUNE: It's not just Oakland.

16 SENATOR PETRIS: Yes, it isn't just Oakland, but that's
17 where I live.

18 (Laughter.)

19 MR. TERHUNE: It's kind of scary on the streets.

20 SENATOR PETRIS: I'll withdraw that, your Honor. That's
21 the area I represent, put it that way.

22 I'm probably the oldest person living in Oakland who was
23 born there, and I want it to be like it was in those days, see.

24 MR. TERHUNE: You certainly have our guarantee that
25 anything we can do, we'll help.

26 SENATOR PETRIS: Thank you.

27
28

1 I have a question or two on the statewide thing. Well,
2 I had a nonrelated question, but I wondered if you're familiar
3 with the name of Albert Payson Terhune and if you're related.

4 MR. TERHUNE: Dog stories.

5 SENATOR PETRIS: Is he related to you?

6 MR. TERHUNE: Yes, a distant relative of grandfather.

7 SENATOR PETRIS: A great, great author. I've read a lot
8 of his --

9 MR. TERHUNE: We're dating ourselves now.

10 SENATOR PETRIS: Well, yes. I've read a lot of his
11 books as a youngster, just about every one I could get my hands
12 on. So I salute you. I just think that's marvelous.

13 MR. TERHUNE: I believe, unfortunately, we lost in a
14 fire some notes between my grandfather and Albert Payson.

15 SENATOR PETRIS: Have you formed any conclusion after
16 all these years regarding the length of the sentence and
17 deterrence or reduction in crime?

18 You know, there's always a school of thought that says
19 we're being too lenient and too mild, and if we just would
20 increase those prison terms, both for young people and others,
21 that the word would get around, and it would act as a deterrent.

22 Do you have any observations on that one way or the
23 other? We've been increasing them, as you know, every year
24 practically, even for young people in the more violent
25 categories.

26 Does that work?

27

28

1 MR. TERHUNE: I have come to the point over the years
2 that I do believe time does serve a form of deterrence.

3 But probably more importantly, you know, if you put
4 somebody away and you just kind of lock the key up, and leave
5 that person to their own devices to do nothing, then you're going
6 to turn somebody out that really doesn't have any skills.

7 If you can have program, and if you can work with the
8 people when they're in the system, if you can deal with their
9 drug problems, if you can deal with their emotional needs, if you
10 can provide them education, training, so they can go out with
11 some employment skills, so that they can survive, then I think
12 time --

13 SENATOR PETRIS: But we're not doing that. We're not
14 doing very much of that; are we?

15 MR. TERHUNE: We are in the Youth Authority. At this
16 point, we're still 100 percent programmed. We've got --

17 SENATOR PETRIS: Our recidivism rate is about half;
18 isn't it?

19 MR. TERHUNE: Well, it's kind of interesting.

20 SENATOR PETRIS: Is that considered low?

21 MR. TERHUNE: Well --

22 SENATOR PETRIS: I know in comparison to some groups,
23 it's very low. But I wonder how --

24 MR. TERHUNE: Well, I'll tell you, if you were batting
25 .500 in the major leagues, you'd probably be in the Baseball Hall
26 of Fame.

1 The problem in our system, if you're batting .500, you
2 aren't doing so good.

3 But every person that comes into our system is a
4 leadpipe cinch of a failure. He's failed through program, after
5 program, after program. So that product that's coming in has got
6 some real problems with it before we start dealing with it.

7 Now, on the other side, our violation rate, people are
8 saying, is going up. If you really take a close look at that
9 violation rate, the amount of hard crime is actually going down
10 because we're being hung on our own petard in terms of
11 technology. Five, six years ago, we couldn't detect whether
12 somebody was using drugs; we couldn't do it. They now have
13 tests.

14 And I'll tell you one thing in California, you know if
15 your parolee is violating. They're tested, and if those results
16 come out negative, they go in and the Board takes action.

17 Now the Boards, and I know for the Youthful Offender
18 Parole Board, and I imagine the Board of Prison Terms, if you
19 come in with a dirty test, you're going to get some kind of
20 intervention. And that's what we are doing.

21 So what's happened, our technical violations have gone
22 up; our actual crime violations have gone down. And to me it's a
23 very significant trend.

24 So as a result, what we're going to try to do is focus
25 in on how we can come up with some safe, responsible programs for
26 intervening in this technical violation group, which is primarily
27 composed of substance abusers.

28

1 So in a way, just looking at violation rates, sometimes
2 distorts things because technology has improved. The other
3 thing, if you compare California rates with other States, I would
4 suggest that other States do not have the ability to keep track
5 of their offenders as they do here. I've personally taken a look
6 at some of the things they do. They've got some fantastic
7 programs in other States. But we certainly know what our
8 offenders are doing here in the State of California, and I think
9 it's good.

10 SENATOR PETRIS: Thanks very much.

11 Thank you, Mr. Chairman.

12 CHAIRMAN ROBERTI: Thank you very much, Senator Petris.

13 Any other questions?

14 SENATOR CRAVEN: Move Mr. Terhune.

15 CHAIRMAN ROBERTI: Senator Craven moves Mr. Terhune's
16 confirmation be recommended to the Floor.

17 Is there any opposition?

18 Seeing none, the Secretary will call the roll.

19 SECRETARY WEBB: Senator Ellis.

20 SENATOR ELLIS: Aye.

21 SECRETARY WEBB: Senator Mello. Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.

27

28

1 The vote is four to nothing; confirmation is recommended
2 to the Floor.

3 MR. TERHUNE: Thank you very much, and I'll tell my wife
4 you were interested.

5 (Laughter.)

6 SENATOR PETRIS: I take back what I said.

7 CHAIRMAN ROBERTI: Our next Appointee is General Robert
8 C. Thrasher, Director and Adjutant General of the State Military
9 Force.

10 SENATOR ELLIS: While he is coming up, Mr. Chairman --

11 CHAIRMAN ROBERTI: Yes, Senator Ellis.

12 SENATOR ELLIS: -- you know, we have received a great
13 deal of input on this nomination both pro and con. Some of it
14 that I have had in writing has smacked of accusations that are
15 very, very serious, and I believe bordering on legal action if
16 not definitely legal action required.

17 I know it's very cumbersome, and I don't know how the
18 witnesses would take it, but I think in those cases where we're
19 discussing or reviewing substantive materials, other than
20 character witnesses, that the witnesses should be sworn.

21 CHAIRMAN ROBERTI: Senator Ellis is recommending that
22 the witnesses be sworn in when we are discussing substantive
23 items regarding, I guess, factual data as opposed to matters of a
24 more subjective nature, not that it's not factual either,
25 character witnesses and people of that type.

26 Is there any discussion? Senator Petris.
27
28

1 SENATOR PETRIS: Well, we always have a legal problem
2 when that comes up. I think I understand what you're driving at,
3 but if you have some active participants and get to the area that
4 you're concerned about, maybe even something criminal, if we
5 compel a witness to take an oath, that means they get immunity.
6 And then that screws up whatever prosecutorial action may flow,
7 not from this hearing, but from other things that are going on.

8 SENATOR ELLIS: That's the risk we run.

9 SENATOR PETRIS: Well, I don't know if I want to run it.
10 That's why, you see, if we get someone that's --

11 CHAIRMAN ROBERTI: Why don't we --

12 SENATOR PETRIS: -- in the middle of some investigation
13 we don't even know about.

14 CHAIRMAN ROBERTI: Why don't we proceed, and if we start
15 coming across the kind of material Senator Ellis is discussing,
16 then why don't you ask for a point of order, Senator Ellis, and
17 then we will discuss whether we should put that particular
18 witness for those particular questions under oath.

19 SENATOR ELLIS: All right.

20 I notice our Leg. Counsel is in the audience. Could we
21 invite him up?

22 CHAIRMAN ROBERTI: Yes, please.

23 Counsel, would you come sit up at the dais with us.

24 General Thrasher, I understand you have Colonel Stuart
25 Brody here.

26 GEN. THRASHER: Yes, sir, I do.
27
28

1 CHAIRMAN ROBERTI: So he can come up anytime you wish to
2 have him, if you do.

3 We were in testimony two weeks ago, I believe. How I
4 suspect we will proceed is, I don't think we need an opening
5 statement from you since we did have that, unless you choose --

6 GEN. THRASHER: Excuse me, this is my first appearance.

7 CHAIRMAN ROBERTI: You're right, excuse me.

8 SENATOR PETRIS: They all look alike when they're in
9 uniform.

10 (Laughter.)

11 CHAIRMAN ROBERTI: I'm overwhelmed by the number of
12 witnesses.

13 General Thrasher, you can start then.

14 GEN. THRASHER: I have been a member, Mr. Chairman and
15 Members of the Rules Committee, of the California National Guard
16 for over 30 years, both as a full-time employee of the Military
17 Department and as a traditional part-time member.

18 Enlisting as a Private in 1957, I served for three years
19 until I was commissioned as a Second Lieutenant 30 years ago. I
20 have served in both command and staff assignments, from platoon
21 leader to Adjutant General.

22 As a full-time employee for the Military Department, I
23 have served in 11 different assignments over a 28-year period,
24 ranging from an Emergency Planner, Budget Officer, Military
25 Assistant to both Governor Reagan and Governor Brown, to State
26 Inspector General, culminating in January, 1983, as Deputy
27 Director, and since March of 1987, the Director.
28

1 I believe my military assignments and employment
2 experience during the past 30 years provide the appropriate
3 qualifications and background necessary for the position of
4 Adjutant General. The qualifications for appointment as
5 contained in Section 162 of the California Military and Veterans
6 Code are a minimum of 10 years commissioned service in the
7 National Guard, and two, four years in command at Battalion or
8 higher headquarters, or four years staff experience at Brigade or
9 higher level. I meet these basic qualifications.

10 I would like to take a moment to share with you the
11 recent developments in the National Guard. The purpose of the
12 Guard has remained unchanged since its inception: to provide
13 responsive, trained individuals and units for their federal and
14 State missions. What has changed, and most dramatically during
15 the past 10 years, is the level of readiness necessary to
16 accomplish our mission.

17 This change has been brought about by the escalating
18 costs of maintaining a large, active duty Army and Air Force.
19 The alternative chosen by both Congress and the federal
20 administration is known as the "Total Force." Under this
21 concept, the actives forces now share many of their previously
22 assigned tasks and missions with the Reserve and the Guard.

23 The result is significant change in both resources and
24 training. Prior to Total Force, for example, plans provided
25 30-60 days advance notice for mobilization, and up to 18 months
26 of training and equipment refitting prior to our deployment.
27
28

1 Current plans are -- call for Guard personnel, Army and
2 Air, to report for mobilization within 24 hours. Some California
3 units are expected to deploy overseas within 72 hours following
4 notification. In the event of a conflict in Europe or Asia,
5 several California units are programmed to be on the scene within
6 10 days.

7 To reach readiness levels necessary for these response
8 times, considerable increases have occurred in our personnel
9 strength, the federal budget, and federal full-time employees.
10 In addition to our Army and Air Guard programs, the Military
11 Department is also responsible for: the California Cadet Corps
12 program which now has 3,300 participating junior and senior high
13 school students; the State Military Reserve, currently with 900
14 volunteer members; and a disadvantaged youth employment training
15 program, the IMPACT program, which trains approximately 800
16 students per year.

17 The Adjutant General in the Military Department with
18 over 400 employees here in Sacramento are responsible for:
19 resourcing all assigned and authorized programs with dollars,
20 people and facilities through the federal and State budget
21 planning process; directing and guiding the ten Army and Air
22 military commands which includes a variety of organizations
23 ranging from a 15,000 member infantry division, jet fighter air
24 defense units, medical, and search and rescue. These
25 organizations with their 248 units are located at 137 armories
26 and air bases in 119 communities in California.

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1 We are also responsible to administer, supervise and
2 control more than 32,000 combined military members, students and
3 employees through our Personnel and Fiscal Offices, and to
4 provide career opportunities through equitable recruitment,
5 assignment, training and counseling of personnel within five
6 different personnel systems.

7 My two immediate priorities for the Guard are: to
8 maintain readiness levels of the 26,000 members of the Guard to
9 ensure State and federal mission capability through aggressive
10 and effective retention and training programs; secondly,
11 rebuilding or replacing armories for our Army Guard Units in
12 locations where demographic studies dictate a change is required
13 or storage, training space is inadequate.

14 Some of the accomplishments of the Military Department
15 and the Guard during my 11 months since my appointment as the
16 Adjutant General have been: two major earthquake emergency
17 response preparedness exercises involving medical assistance and
18 command and control capability have been conducted involving
19 several federal and 12 State agencies, four local jurisdictions,
20 and approximately 800 personnel.

21 Since December 16th, 1987, over 26,000 homeless have
22 been provided shelter in 15 of our armories during the cold or
23 wet weather.

24 Revitalizing our equal opportunity and affirmative
25 action program, new general and specific measures have been
26 identified to our supervisors and commanders to assist them in
27 achieving our established goals.
28

1 Initiating a long-range planning program forecasting how
2 the Guard can best serve the State and nation for the next 20
3 years.

4 In August, September and October, the California Guard
5 provided personnel and equipment to support forest fire
6 suppression activities in 12 different counties at 27 separate
7 fires, the largest State support provided by the National Guard
8 in over 20 years.

9 Lastly, we acquired federal budget authority for six
10 modern helicopters for our Air National Guard Unit located at
11 Moffett Naval Air Station. These aircraft will greatly improve
12 search and rescue capability, both on land and off the coast of
13 California.

14 Thank for this opportunity to share this information
15 about the Military Department, the California Guard, and myself.

16 CHAIRMAN ROBERTI: Thank you very much, General.

17 Are there any questions? Senator Petris.

18 SENATOR PETRIS: I have a lot of questions, but I don't
19 know whether you want them now or after we've heard from other --

20 CHAIRMAN ROBERTI: I'd like to hear as many witnesses as
21 we could.

22 SENATOR PETRIS: Yes.

23 CHAIRMAN ROBERTI: Then we'll have questions.

24 SENATOR PETRIS: Okay.

25 CHAIRMAN ROBERTI: We have a list of witnesses here.

26 GEN. THRASHER: Yes, sir.
27
28

1 CHAIRMAN ROBERTI: Your first witness you have requested
2 is Mr. Norman Phillips.

3 GEN. THRASHER: Yes, sir.

4 CHAIRMAN ROBERTI: He's with Pacific Bell from
5 Sacramento.

6 Mr. Phillips, would you like to come up.

7 SENATOR CRAVEN: Mr. Chairman.

8 CHAIRMAN ROBERTI: Yes, Senator Craven.

9 SENATOR CRAVEN: Just a point, and then nothing we're
10 discussing.

11 For the third consecutive week on matters of great
12 interest to people within the building and the media, the
13 communications system has broken down again.

14 CHAIRMAN ROBERTI: Along with the Members' elevators.

15 (Laughter.)

16 SENATOR CRAVEN: Well, you know, you can always use
17 another elevator, but there's only one communications system.
18 It's a little aggravating.

19 CHAIRMAN ROBERTI: I agree. I don't know what to tell
20 you, Senator.

21 Also Senator Greene, you'll let me know when you want to
22 come up.

23 Mr. Phillips.

24 MR. PHILLIPS: Mr. Chairman, I sincerely hope the
25 communications system was not installed by Pacific Bell.

26 (Laughter.)
27
28

1 SENATOR CRAVEN: No, sir, I don't think it was.

2 MR. PHILLIPS: I have lived and worked in Sacramento now
3 for 12 years, representing my company in the community, and have
4 served in a variety of capacities, including twice chairman of
5 the Military Affairs Committee of the Chamber of Commerce and
6 President of the Chamber of Commerce.

7 I have a mild, modest military background. I flew B-17s
8 in World War II. Volunteered for active duty in the Korean War;
9 served in the Reserve and chaired Congressman Matsui's Advisory
10 Committee for Mather Air Force Base.

11 I have 40 years in management; feel reasonably well
12 qualified to evaluate the quality of management in other people.

13 I have known General Thrasher for about five years, and
14 it was at his persuasion and members of his staff that I authored
15 a letter to 30 major businesses in the greater Sacramento area,
16 urging that they provide time for their employees to serve in the
17 Guard and the Reserve.

18 I have been able to evaluate his judgment in terms of
19 his selection of communities in which to become involved,
20 recognizing that he has to spread himself across something like
21 120 different locations in the State of California.

22 I have come admire his competence on his feet. I was
23 invited to speak to the group of Adjutant Generals from the
24 United States that met here in Sacramento. I was invited by the
25 State Military Reserve to address one of their annual meetings,
26 and I was honored by General Mardikian with an appointment as an
27 honorary General in the Armenian Air Force.

28

1 I doubt that that would give Chairman Gorbachev a
2 disquiet, but for what it's worth, that did happen.

3 (Laughter.)

4 I have come to speak in behalf of this man's
5 qualifications. He has been the Assistant Adjutant General since
6 1983. He has spent his entire life, adult life, working with the
7 National Guard.

8 If there were aberrations in performance, it would be no
9 less true of each one of us. And while I suspect over the next
10 few hours he will have his detractors, that is true of anyone in
11 a position of authority.

12 I would suspect, although I have no knowledge, of the
13 fact that none of you were unanimously elected to office.

14 CHAIRMAN ROBERTI: We're working on that.

15 (Laughter.)

16 MR. PHILLIPS: I would urge that consideration be given
17 to his accomplishments, not only for the period of time that he
18 spent as the Assistant Adjutant General, but now having served
19 almost a year in that office, and in my view, having performed
20 brilliantly.

21 And based upon 40 years in management, experiencing some
22 of the trials and tribulations of management myself, I give you
23 an unhesitating and unqualified recommendation for the
24 confirmation of General Thrasher as the Adjutant General.

25 Thank you, sir.

26 CHAIRMAN ROBERTI: Thank you very much, Mr. Phillips.
27
28

1 Unless there's a pressing question of Mr. Phillips, I
2 think we would like to hear all the witnesses, and then have
3 specific questions later.

4 Thank you, Mr. Phillips.

5 The next witness, I take it, is Mr. George Dean,
6 Sacramento Urban League, Sacramento.

7 MR. DEAN: Thank you, Mr. Chairman.

8 It's really unfortunate. I know Norm Phillips, and I've
9 always promised myself, many years ago, that I would never follow
10 him when it comes to speaking, but since this is the situation, I
11 guess I'll have to.

12 CHAIRMAN ROBERTI: It's good to have you with us.

13 MR. DEAN: Thank you.

14 Good afternoon. My name is George Dean, and in addition
15 to being a resident and taxpayer of the State of California, I
16 work as President of the Sacramento Urban League and also serve
17 as President of the California Council of Urban Leagues.

18 As you may or may not know, the Urban League is a
19 private, nonprofit, community-based organization, and during its
20 78-year history in this country, it has had as its mission to
21 assist communities in ameliorating conditions and solving
22 problems arising out of racial, economic, and social inequities
23 in the American system.

24 I'm here today to offer my endorsement to the
25 confirmation of Robert Thrasher as Director and Adjutant General
26 of the State Military Forces.

27

28

1 I've known General Thrasher for the past eight years,
2 and have known him to be an intelligent, concerned and dedicated
3 individual. General Thrasher has exhibited, I believe, a sincere
4 desire to have State Military Forces truly representative of the
5 diverse -- diversity of the State, and this is something that has
6 not always been true with the California National Guard.

7 And I welcome his appointment so that indeed that
8 commitment can become a reality.

9 He has also exhibited a commitment to the California
10 IMPACT program, a program operated by the National Guard that is
11 designed to educate and train and place into jobs disadvantaged
12 young people who, in all probability, would not receive this
13 opportunity in any other setting.

14 As I stated earlier, I support the confirmation of Bob
15 Thrasher as Director and Adjutant General of the State Military
16 Forces and urge you to vote the same.

17 Thank you.

18 CHAIRMAN ROBERTI: Thank you, Mr. Dean.

19 The next witness is Mr. B. T. Collins.

20 MR. COLLINS: Mr. Chairman, I'm B. T. Collins.

21 I have known General Thrasher since January of 1976.
22 The subject I would like to address, I think I covered it in my
23 letter to you, Mr. Chairman, on January 20th, is simply those
24 traits of leadership that are in greater demand today than they
25 were 20 years ago when the role of the National Guard was
26 essentially to be a third echelon, long after the front-line
27 troops and their reserves, active duty reserves, have gone in.
28

1 Now, as I understand the federal three-legged concept,
2 the National Guard, with its up-to-date equipment, and its
3 training worldwide, is ready and is expected to take its place
4 immediately should a conflagration erupt, which is always
5 possible in the Persian Gulf and in Central America.

6 Recently there were two articles in the Los Angeles
7 Times: one was an extensive piece about all the individuals who
8 felt that they did not need to serve their country 20 years ago,
9 indicating some type of character; and those -- that one
10 individual who retired after joining the Army at the age of 13,
11 the Army National Guard.

12 I find the juxtaposition interesting in terms of service
13 to their State. This is all done in the background of the
14 resignation of my friend James Webb, Secretary of the Navy.

15 What is important about Mr. Webb's resignation is not
16 whether he or Mr. Weinberger or Mr. Carlucci were right about the
17 600 ship Navy. What is important is Mr. Webb's integrity and why
18 people in positions of military leadership have to have
19 integrity.

20 The overwhelming aspect that is important in the leader
21 of troops in a combat situation is their integrity. You can be a
22 leader with a few drops of courage, a few grains of the ability
23 to inspire people. But without question, the down to basics when
24 you scrape the meat from the bone, the acid test is that
25 gentleman's, that individual's, that commander's integrity.

26 I have seen lack of integrity in combat situations that
27 have caused people their lives. I've seen a charade perpetrated
28

1 on this country 25 years ago in sending young men to Vietnam who
2 were not trained. I witnessed it personally when they lost their
3 lives simply because they were not trained. I cannot emphasize
4 how much the training is important, and I think that's what the
5 California National Guard, in my experience with it, has done.

6 So here you have an organization of true, dedicated
7 soldiers, no longer draft dodgers. The people want to be in
8 there because they want to serve their country; they want to
9 serve the State, and you need somebody to inspire them. And I
10 think you have that in General Thrasher.

11 I know him from my own personal experience of dealing
12 with him over 12 years in government and now. He is simply a man
13 of his word.

14 Everybody's going to have different managerial styles --
15 George Patton, Omar Bradley, General Westmoreland, James Webb.
16 But the troops will always respect somebody that they don't
17 necessarily have to like. And you can always dislike dealing
18 with the Legislature. You deal with those people that possess
19 and demonstrate integrity.

20 So, I would just like to add my own voice as an old
21 soldier, as a taxpayer, and as an unrequited and total groupie of
22 General Thrasher. I think that the Senate of the State of
23 California would not be disserved, nor would the people,
24 demonstrated by his record of service for 30 years.

25 I thank you for listening.

26 CHAIRMAN ROBERTI: Thank you, B. T.

27 Any questions? We'll hold them.
28

1 The next witness is Mr. Celeste King, Brigadier General,
2 State Military Reserves, and also a businessman from Los Angeles.

3 MR. KING: Thank you very much, Mr. Chairman.

4 I don't know whether it'll have any impact or not, but
5 at one time I did live in your district.

6 CHAIRMAN ROBERTI: Yes, I know very well, yes. You have
7 friends.

8 MR. KING: I have not moved. The district has moved.

9 Thank you very much for this opportunity to say a few
10 words in connection with a person that I have a good deal of
11 respect for. I guess I should give you just a little insight as
12 to my background in the military.

13 I volunteered in World War II as a Private; ended up an
14 Air Force pilot with the famed Tuskegee Airmen Group. Through
15 the years I have had some hot and cold points as it applies to
16 the military. Didn't start out under the best of conditions.
17 They were very segregated, and it took a long time for me to
18 begin to blend around.

19 One of my reflections deals with the mid-'60s as far as
20 the National Guard is concerned. I was standing on Central
21 Avenue in 1965 when the Guard came down Central Avenue, and I
22 made up my mind at that particular point that at some point I was
23 going to get involved so that those kind of problems would be
24 significantly reduced, and certainly that there would be a better
25 approach, other than have the Guard simply running down the
26 street out there with bayonets drawn.

27
28

1 During the '60s, I became President of the Los Angeles
2 NAACP, and I guess I did kind of harden and came up with rather
3 negative features as far as the Guard and the Reserve were
4 concerned. I also, in Los Angeles, have served in other
5 capacities. I was President of the Los Angeles City Human
6 Relations Commission, and unfortunately I am not a member of this
7 body, but I did run for the Assembly on occasion.

8 I know very well from my own experience with the Nominee
9 at this particular point that he is sensitive to the nature of
10 the various minority communities. In Los Angeles, where we
11 certainly have a mix all the way across, which could be sort of a
12 microcosm of the rest of the state, I'm absolutely certain in my
13 own mind that if a situation were to occur where a problem
14 developed, that General Thrasher will be calling together, and
15 has participated in activities that would put him in a position
16 so he could best do the job.

17 There are a lot of facets involved in his particular
18 job, and certainly that is going to be one of the more important
19 kind of things that we have to look at.

20 So, I am here today to say that I think that General
21 Thrasher is the best man that there is available at this given
22 time. I have served under -- incidentally, I was appointed
23 during the Brown administration as a Brigadier General, and he
24 will be the third person, he is the third person I have served
25 under. Certainly the other two were very good, but I find more
26 redeeming points in General Thrasher.

27 Thank you.
28

1 CHAIRMAN ROBERTI: Thank you very much, Mr. King. We
2 appreciate your testimony.

3 The next witness is Al Zapanta with Atlantic Richfield
4 Company from Arizona.

5 MR. ZAPANTA: Dallas.

6 Thank you, Mr. Chairman, Members of the Committee.

7 My name is Albert C. Zapanta, born and raised in East
8 Los Angeles; property owner and taxpayer here in California. My
9 residence is Dallas, Texas with Arco Oil and Gas Company.

10 I'm here today to speak on behalf of Brigadier General
11 Bob Thrasher to be confirmed as Adjutant General of the State of
12 California.

13 I am presently a Colonel in the Army Reserve stationed
14 at the Pentagon on my Reserve duty in the office of the Secretary
15 of Defense, Reserve Affairs as a Mobilization Planning Officer.

16 I started as a Private here in the Cal Guard in 1964,
17 went through the ranks to Sergeant, a graduate of the California
18 Military Academy, as a Second Lieutenant of Infantry, served
19 three years on active duty. In '69, I was in Vietnam for 13
20 months, where I spent all of it as a combat officer, platoon
21 leader in the Infantry, and a Company Commander of an Airborne
22 Ranger Unit in the Mekong Delta.

23 I've commanded an Infantry Battalion in Inglewood, the
24 3rd of the 160th, which the urban battalion here in the
25 California National Guard. During that period of time, Bob
26 Thrasher was in fact Assistant Adjutant General, but I've known
27 Bob for over 20 years. We are both graduates of the California
28 Military Academy.

1 The reason I'm here is not only personal but because of
2 Bob Thrasher's honesty, his integrity, his devotion to duty, to
3 the Cal Guardsmen, his competence, and he also is a Cal
4 Guardsman.

5 I also want to be here as a national board member, and
6 am, of the Mexican American Legal Defense and Education Fund, of
7 which I've been a member for the last 15 years.

8 That brings me to another point, affirmative action, of
9 which you gentlemen and ladies, of course, are well aware. For
10 the first time in the history of the California National Guard,
11 because of this gentleman, we have the very first Mexican
12 American General Officer, Dan Hernandez. Dan is the Assistant
13 Division Commander of the 40th Infantry Division. And it's
14 because of the leadership, because of the tenacity, and because
15 of the downright honesty of Bob Thrasher and the other officers
16 of the California National Guard that we have the very first.

17 I can look at it from two sides. I can look at it from
18 the side of why did it take so long? But I'm going to look at it
19 from the positive side and say it's here, and it's been done.

20 I think it's important, Senator Mello, and I know you
21 agree with me, that it's that kind of leadership that makes a
22 difference.

23 The other that is very, very important to me is that as
24 you gentlemen think of your vote, I ask you very sincerely that
25 you cast it in the affirmative for Bob Thrasher to be Adjutant
26 General of the State of California because he deserves it. You
27 will hear pros and cons. I don't know of anybody, and I'm sure
28

1 you're very aware of that, that has not been at this seat that
2 doesn't go through that.

3 I ask you as a Californian, I ask you as a Cal
4 Guardsman, and I ask you as a friend of many of you that this is
5 the right vote, this is the right man for this job.

6 Thank you very much.

7 CHAIRMAN ROBERTI: Thank you, Mr. Zapanta.

8 The next witness is Dennis Kenneally.

9 ASST. SEC. KENNEALLY: Mr. Chairman, my name is Dennis
10 Kenneally, and I'm the Deputy Assistant Secretary of the Air
11 Force for Reserve Affairs. I apologize for that long title; it
12 goes with the job.

13 I appreciate the opportunity to appear before you and
14 the Members of your Committee on the occasion of the confirmation
15 hearing of Brigadier General Robert Thrasher to be Adjutant
16 General of the California National Guard, a superb officer and a
17 very fine soldier.

18 I'd like to make a brief opening statement regarding the
19 mission of the Air National Guard in our country today and the
20 policies affecting its management, operation and mission
21 training.

22 Before I do that, however, I would just like to mention
23 that I have with me this afternoon one of our truly outstanding
24 officers in the Air National Guard, a man who has served our
25 country as an officer and a fighter pilot, and now serves as the
26 Deputy Director of the Air National Guard in the Pentagon in
27 Washington, D.C., and that's Brigadier General John McMerty,
28

1 who's seated in the back. He is available to make some brief
2 remarks regarding operations and training, and more specifically
3 to answer any technical questions you may have in that regard.

4 In my position, I am responsible for the policy and
5 oversight of the Air National Guard, the Air Force Reserve, and
6 the Civil Air Patrol, as well as the Air Reserve Forces Policy
7 Committee, which is composed of general officers drawn equally
8 from three components of today's Total Air Force: that includes
9 the active or regular Air Force; the Air National Guard; and the
10 Air Force Reserve.

11 I think it's fairly common knowledge, Mr. Chairman and
12 Members, that our Reserve forces, and more specifically, the
13 National Guard of the United States, are no longer weekend
14 warriors. Given budget constraints under which we must operate,
15 world commitments, and the volatility of today's world, the Air
16 National Guard is a ready force which must meet and train to the
17 same standards as their active force counterparts.

18 Specifically, Title 32, Section 501 of the United States
19 Code states that the discipline, including the training, of the
20 Air National Guard shall conform to that of the United States Air
21 Force. And I can tell you that the men and women who are the
22 citizen airmen of our Air National Guard are true professionals,
23 and although their service may be part-time, their dedication is
24 no less, and their pride of craft is just as great.

25 As you're aware, historically the Guard is the oldest
26 military force and was specifically provided for in the
27 Constitution by the founders of our country, but the Guard has
28

1 gone through a development process in turn with the development
2 of our country. And without citing a very detailed legislative
3 history, more recently, in 1971, then-Secretary of Defense,
4 Melvin Laird initiated the Total Force Concept, later to become a
5 policy and, I might add, reaffirmed by all subsequent Secretaries
6 of Defense and Presidents.

7 The purpose of the Total Force policy is simple: that
8 all components of our armed forces, active Guard and Reserve, are
9 to be trained, equipped and manned to the same standard, to
10 perform essentially the same mission and be prepared at the time
11 of call should that time come to assume their mission.

12 The Air Guard has assumed this responsibility superbly
13 with outstanding results. Each year our citizen airmen
14 demonstrate their proficiency in flying, in communicating,
15 maintaining, supplying, and a host of other functions by winning
16 numerous top honors in competitions with similar active and
17 Reserve Units.

18 As an example, starting off in 1982, the Air National
19 Guard won the first Fighter Pilot Competition, and more recently
20 won the Air Force Flying Safety Award for the best flying safety
21 record in 1987, the Strategic Air Command Navigation Trophy, and
22 the worldwide Air Lift Competition in 1986.

23 I give you this list to emphasize the professionalism
24 and competence of our Air Guard today. And your Guard, the
25 California Air Guard, is no exception. As the key leaders and
26 policy makers of the State, I can tell you that you can be justly
27 proud of the California Guard's accomplishments.
28

1 Some more specific examples. In 1986, your 162nd Combat
2 Communications Group, which is headquartered here in North
3 Highlands, won first place in the competition sponsored by the
4 United States Air Force for Tactical Communications Units. Your
5 144th Fighter Interceptor Wing, which flew 3600 sorties last
6 year, has four aircraft on alert at two locations, 365 days a
7 year, 24 hours a day, as defense cover for much of the West
8 Coast. They also won the Outstanding Unit Award for the period
9 January, '85 to December of '86, and received numerous excellent
10 ratings on their organization, readiness inspection, and
11 management effectiveness inspections.

12 Your 129th Aerospace Rescue and Recovery Group, whose
13 motto is "So Others May Live," has won many awards and has almost
14 become a legend, holding two successive world records for the
15 longest nonstop over water rescue. And I might add, just before
16 coming to this hearing, Mr. Chairman and Members, I was notified
17 by the Department of Defense that this same unit was awarded the
18 one award given annually for the Outstanding Pararescue Unit,
19 active Guard or Reserve, went to this unit.

20 And of course, you know of the 146th Tactical Airlift
21 Wing, located at Van Nuys, which is one of only four units in our
22 country that is equipped to fight fires with airborne drops of
23 fire retardant. And it's been through the service of that unit
24 that has saved millions of dollars in property for the citizens
25 of California.

26 The Air Guard today is not just an adjunct force for
27 augmentation. It is a full partner indeed. In fact, it is the
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1 fifth largest air force in the world. In total, the Air Guard
2 has approximately 60 percent of the Air Forces' Combat
3 Communications, more than 80 percent of the air defense of the
4 United States, 25 percent of the Tactical Fighter force, and
5 about a third of the Tactical Airlift.

6 Of our Reserve Forces, the National Guard is unique. It
7 has, as you're aware, a dual mission, serving both the State and
8 the federal government. And the Adjutant General, appointed by
9 the Governor of California and confirmed by the Senate, is the
10 link between the Governor and federal authorities, the
11 Secretaries of the service departments, the Chief of the National
12 Guard Bureau who jointly represents the Army and the Air National
13 Guard to the respective service chiefs in the Department of
14 Defense.

15 Because the Air National Guard represents a significant
16 portion of our country's defense, it must be fully developed.
17 And to ensure responsiveness during emergencies, its peacetime
18 management, command, control, training, personnel, and equipment
19 resources must be continually evaluated. And these evaluations
20 are conducted using the same standards applied to the active
21 force.

22 Now, to accomplish this, the Air Force uses the method
23 of associating an Air Guard Unit with what is referred to as a
24 Gaining Command. A Gaining Command is a major command to which
25 an Air Guard Unit will be assigned upon mobilization. The
26 Gaining Command, an active Air Force command, ensures that the
27 Air National Guard Units are in a state of readiness to function
28

effectively when mobilized to support the missions of that Gaining Command.

I should emphasize that although we train vigorously to very high standards in the Air National Guard, in the conduct of all operations and training the Air Force puts safety first. This theme is stressed constantly in both the civilian and military chain of command, but this profession is by nature a hazardous one. And unfortunately, mishaps do occur. And when they do, the Air Force has a very thorough process for aircraft accident investigations.

The purpose of these investigations is very straight forward: to ascertain the cause of the mishap, and then to learn from the incident so ideally it will not reoccur. And part of this process, as specified by regulation, is the promise of confidentiality.

These reports are prepared under the aegis of our Office of the Inspector General, and confidentiality is used to encourage frank and open discussion so the true facts may be determined for the benefit of everyone. Therefore, when reports are released, portions may be blanked out to protect some sources or other sensitive material; however, there are procedures for release of such information if requests are made initially or on appeal.

Mr. Chairman, Members of the Committee, in summary, the California Air Guard is, in our opinion, well prepared to meet both its State and federal missions. Their citizen soldiers and airmen of California prove every day, as the Founding Fathers

1 intended, that they are the keystone of our Republic. The Air
2 Guard of today is not a force preparing to be ready; it is a
3 force at the ready.

4 Thank you for this opportunity. I will be pleased at
5 your convenience to answer any questions you may have.

6 CHAIRMAN ROBERTI: Thank you very much, Mr. Kenneally.
7 Senator Petris.

8 SENATOR PETRIS: Yes, I want to add my thanks.

9 That's a glowing picture of the Air National Guard. I'm
10 very happy to hear it.

11 One of the reasons we have so many people here today and
12 this nomination has created a lot of interest, where normally it
13 goes through without too much excitement, is the bad situation
14 that is obtained in one of the bases, which I noticed in your
15 description wasn't mentioned, and that's Fresno.

16 Are you familiar with the fact -- I don't want you to
17 describe them -- but are you familiar with the fact that there've
18 been some problems there and allegations back and forth?

19 ASST. SEC. KENNEALLY: Yes, sir, Senator. I am, and I
20 did allude to the unit at Fresno.

21 SENATOR PETRIS: Which one was that?

22 ASST. SEC. KENNEALLY: The Fighter Interceptor Wing,
23 yes, sir.

24 SENATOR PETRIS: That's Fresno?

25 ASST. SEC. KENNEALLY: Yes, sir.

26 SENATOR PETRIS: What troubles me is that among the
27 allegations that we have here that are known to General Thrasher,
28

1 and he will address them -- of course, he's not Air Guard. He's
2 on top, so we have to talk to the Air General. I realize that.

3 But there is an allegation that the California Air
4 National Guard has the worst mishap or accident rate in 30 years;
5 that the rate is 15 point something per 100,000 flying hours,
6 compared to 1.5 for the nation.

7 That to me is a very serious difference which calls for
8 an explanation, for which there may very well be a good one. But
9 it's substantially different from the splendid achievements that
10 you have described with respect to other bases and other Wings
11 and other Units.

12 Are you familiar at all with that record?

13 ASST. SEC. KENNEALLY: Yes, sir, I am familiar with it
14 in the generic sense, not necessarily the technicalities of it.

15 SENATOR PETRIS: Another problem that we are facing, and
16 the reason for the hearings, is that in a particular crash in
17 Fresno -- I bring this up because you mentioned the superb
18 training.

19 ASST. SEC. KENNEALLY: Yes, sir.

20 SENATOR PETRIS: Obviously the Units that come in first
21 nationally must be very well trained.

22 ASST. SEC. KENNEALLY: Yes, sir.

23 SENATOR PETRIS: One of the pilots who died in the crash
24 out of Fresno lived here in Sacramento. His widow learned from a
25 newspaper article about a preliminary investigation done by the
26 Air Force, not the Guard but the Air Force.

27 ASST. SEC. KENNEALLY: Yes, sir.
28

1 SENATOR PETRIS: That that particular crash was due to
2 the pilot's lack of training.

3 Then, upon investigating, she found that the records
4 were altered or falsified, or something, to make the training
5 record look far more complete and better than it actually was.
6 And we're talking about the person who was piloting the plane
7 that crashed.

8 That's really why we're having this hearing. Those
9 kinds of things trouble me deeply. I wonder if they trouble you?

10 ASST. SEC. KENNEALLY: Of course. Anytime that we have
11 anything that compromises the integrity of safety or a combat
12 readiness, that is my overall responsibility to ensure that our
13 forces are not only administered in a safe manner, but are
14 prepared to assume their -- both their State and federal
15 responsibilities at the time of mobilization. And I take that
16 responsibility very seriously.

17 We are saddened and we are remorseful that there have
18 been accidents, and even more saddened, of course, that there
19 were fatalities involved.

20 I don't want to speak to the specificity of the
21 allegations as to whether or not a particular individual or
22 officer falsified his flight records. That is more appropriately
23 a subject for his command authority.

24 But it is my understanding that once certain findings
25 were brought to the attention of the chain of command, that
26 remedial action was instituted. And that remedial action is
27 still ongoing.
28

1 So, I would just stress, Senator Petris, that there is
2 ongoing method of evaluations in the Total Air Force, including
3 the Air National Guard and the Air Force Reserve, that's
4 conducted to the same standard of the active Force. If something
5 is amiss in the conduct of those inspections, whether they be
6 operational inspections or maintenance and administrative
7 inspections, then procedures are taken or instituted by the
8 active Force and the Air National Guard to assure that those
9 shortcomings, when identified, are remedied.

10 If for some reason those shortcomings are not corrected,
11 then we have procedures whereby we can take subsequent measures
12 to impress upon the Unit that -- the urgency of their compliance.
13 If that should fail, ultimately we have the authority to pull
14 federal recognition from that Unit, which in essence then means
15 that it is a Unit in name only.

16 SENATOR PETRIS: "We" meaning you or the Air Force?

17 ASST. SEC. KENNEALLY: Air Force is the federal
18 authority.

19 SENATOR PETRIS: You aren't in the National Guard.
20 You're a military Air Force Reserve, I mean.

21 ASST. SEC. KENNEALLY: No, sir. In my civilian
22 capacity, I am responsible for the oversight and the policy of
23 the Air National Guard --

24 SENATOR PETRIS: In the National Guard.

25 ASST. SEC. KENNEALLY: Well, no, sir. I am responsible
26 for the -- I'm in the Civilian Secretariat of the Office of the
27 Secretary of the Air Force, and as such --
28

1 SENATOR PETRIS: That's what I thought you said.

2 ASST. SEC. KENNEALLY: -- but I'm not in the Air
3 National Guard.

4 SENATOR PETRIS: So when you say "we", you're referring
5 to the federal level?

6 ASST. SEC. KENNEALLY: Yes, sir, that's correct.

7 SENATOR PETRIS: Now, what is our remedy here as a
8 Committee if the information we get turns out to be accurate, for
9 example, the facts or the allegations that I recited? Should we
10 look to General Thrasher, or should we look to the Air Guard
11 Commander, who is closer at hand in the Air activities?

12 ASST. SEC. KENNEALLY: I think -- well, I think you
13 should -- for any remedial action, I think you should look to
14 both.

15 When the National Guard Bureau or the active Air Force
16 makes recommendations for remedies to any shortcomings which have
17 been noted as a result of an investigation or an inspection and
18 so notifies the Adjutant General, the Adjutant General then,
19 exercising his operation chain of command, in this case the Air
20 Force, passes on those recommendations so that they can implement
21 that remedial action.

22 And then it's the active Air Force, through the Gaining
23 Command concept, which I described previously, that then ensures
24 that the training and the conduct of operations is to the one
25 standard and only one standard. And then they are evaluated
26 again to make sure that those operations have been brought up to
27 par.
28

1 SENATOR PETRIS: Thank you.

2 ASST. SEC. KENNEALLY: Yes, sir.

3 CHAIRMAN ROBERTI: Senator Ellis.

4 SENATOR ELLIS: Well, having been a Navy person, it's
5 difficult for me to understand your chain of command.

6 In the Navy, you would never have a non-aviator in
7 command of the aviation units, nor would you have an aviator in
8 command of tanks or troops, or anything like that.

9 And it's difficult for me personally to understand how
10 General Thrasher can be responsible for an aviation mishap when
11 he's not an aviator. I don't know what he knows about aviation,
12 and probably very little.

13 So could you explain to us in simple, laymen terms how
14 that command relationship works and why he's accused of causing
15 this accident?

16 ASST. SEC. KENNEALLY: I can't -- Senator Ellis, I can't
17 speak as to the reasoning or the logic behind why he's accused of
18 causing the accident because clearly, in our mind, that is not
19 the case.

20 I would have to say that in the Air National Guard or
21 the Air Force Reserve, we don't expect General Thrasher, being an
22 infantry officer, to be qualified to fly jet aircraft.

23 However, as the Adjutant General, appointed by the
24 Governor and confirmed by the Senate, he is the agent through
25 which coordination is affected with federal and State
26 authorities.

27

28

1 However, your point, sir, is well taken. The
2 operational command and control of an Air National Guard Unit is
3 vested in the operational chain of command. They obviously have
4 the technical expertise, rated officers, knowledgeable in flying
5 procedures, and safety and maintenance attendant to those
6 operations, are technically qualified to command and administer
7 those functions. And they do so to the Air Force standard, which
8 in turn are evaluated by members of the Gaining Command, which is
9 an active Air Force command.

10 SENATOR ELLIS: That's all Air Force.

11 ASST. SEC. KENNEALLY: Yes, sir.

12 SENATOR ELLIS: That's all Air Force that you're talking
13 about.

14 ASST. SEC. KENNEALLY: Yes, sir.

15 SENATOR ELLIS: Now, where does the Adjutant General,
16 and we're only using him as the example because he's the subject
17 here --

18 ASST. SEC. KENNEALLY: Yes, sir.

19 SENATOR ELLIS: -- but I'm sure it applies in other
20 commands, too. Where does he get tied into this thing?

21 ASST. SEC. KENNEALLY: As -- maybe I should take a
22 moment and define the difference between a line officer and a
23 member of the Adjutant General Corps.

24 A line officer, in simple terms, is responsible for
25 operational functions or staff functions.

26 A member of the Adjutant General Corps is appointed by
27 the Governor, in this case confirmed by the Senate, and subject
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1 to federal recognition. However, he can be appointed to that
2 position without federal recognition. A line officer cannot be.
3 He must have certain requisite skills that meet the basic
4 criteria in order to become a line officer, especially a General
5 Officer of the Line.

6 More to the point of your question as to where does
7 General Thrasher fit into the chain of command, I would say that
8 he has overall management responsibility, administrative
9 responsibility, for the California National Guard; reports
10 directly to the Governor. But it is the operational commander
11 who has the hands-on direct responsibility for the conduct of
12 training of his unit.

13 SENATOR ELLIS: What is the sequence of events if an
14 aircraft accident occurs? Can you walk us through that very
15 briefly?

16 ASST. SEC. KENNEALLY: Yes, sir.

17 Once an investigation -- or an accident occurs, an
18 investigation board is convened according to Air Force
19 regulation. Once those findings and recommendations have been
20 determined, they are then referred to or are part of federal
21 authority and are referred both to the United States Air Force
22 and to the National Guard Bureau. Those authorities, and
23 actually there are collateral investigations, then make known to
24 the Adjutant General their findings and recommendations regarding
25 the incidents surrounding that particular accident, whether or
26 not it would require -- whether it was pilot error, whether it
27 was material failure, or there were some remedies which must be
28 instituted.

1 Then the Adjutant General turns to his operational
2 commanders and passes on that information for them to use their
3 technical expertise to ensure that those remedies are
4 implemented. And then the active Air Force in turn then
5 subsequently evaluates that Unit operationally to ensure that
6 that Unit is again up to standard.

7 SENATOR ELLIS: All right. Let's say an accident
8 occurred, and the accident board, who are Air Force people;
9 correct?

10 ASST. SEC. KENNEALLY: Yes, sir.

11 SENATOR ELLIS: Determines that the pilot, let's say it
12 was a night accident, and the pilot, they decided that all pilots
13 needed more night training. Take that as an example.

14 So they would recommend to General Thrasher, for
15 instance in this case, that they should give the pilots more
16 night flying time. Then General Thrasher would look at it, and
17 not being an aviator and doesn't know the difference between
18 flying at night and flying at day, would assume -- submit this to
19 his highest in the chain of command Air Guardsman?

20 ASST. SEC. KENNEALLY: Yes, sir; that is correct.

21 SENATOR ELLIS: And we assume that that Air Guardsman,
22 or woman; could be, I guess?

23 ASST. SEC. KENNEALLY: Yes, sir.

24 SENATOR ELLIS: Would look at it and say, "Yes, we need
25 to do this," and it would be done.

26 ASST. SEC. KENNEALLY: That's correct, yes, sir.
27
28

1 SENATOR ELLIS: So a person out of his element, though
2 the commanding officer, would still be responsible to make the
3 recommendation or even issue an order, not knowing the
4 technicalities and having the expertise.

5 Is that correct?

6 ASST. SEC. KENNEALLY: Yes, sir; that's correct.

7 I probably could use an analogy, and although it's not
8 specified in the regulation, I mean to, I think, put it in terms
9 which we all can understand.

10 It probably would be the difference between direct
11 responsibility and supervisory responsibility. I would say that
12 the overall supervisory responsibility -- and I am
13 oversimplifying -- is vested in the Adjutant General, and the
14 direct responsibility would be in the operational chain of
15 command.

16 SENATOR ELLIS: All right, thank you.

17 CHAIRMAN ROBERTI: Do you wish to continue?

18 ASST. SEC. KENNEALLY: No, sir, I'm finished.

19 CHAIRMAN ROBERTI: Any other questions?

20 We're trying to hold the questions until the conclusion
21 of witnesses.

22 Thank you very much.

23 ASST. SEC. KENNEALLY: Thank you, Mr. Chairman, Members
24 of the Committee.

25 CHAIRMAN ROBERTI: We have one more witness in the
26 affirmative, that is Major General Dan Helix of the 6th Army.
27
28

1 MAJ. GEN. HELIX: Good afternoon, Mr. Chairman, Members
2 of the Committee. My name is Daniel C. Helix. I'm a Major
3 General in the United States Army Reserve.

4 I am presently the Deputy Commanding General for the 6th
5 United States Army, which encompasses the 12 Western States.

6 I'm here today to speak in support of the confirmation
7 of Brigadier General Robert Thrasher as Adjutant General of the
8 California National Guard.

9 This Committee should know that today's Total Army, and
10 I include the Air National Guard in that configuration, is
11 comprised of three components: component one is the active
12 Force; component two is the National Guard; and component three
13 is the Army Reserve.

14 As a member of the Army Reserve, component three, I am
15 involved with the other two components in both training and
16 planning operations. This is especially true of the command
17 element of the California National Guard.

18 I believe it might also be of some interest to tell you
19 that I am here today as an individual, and there was no
20 solicitation from anyone for me to appear.

21 I've known General Thrasher for approximately eight
22 years. During that time I have found him to be a person of high
23 integrity, professionalism, good judgment, and empathy. He has
24 always been a superb representative of the California National
25 Guard.

26 General Thrasher is one of the premier Army trainers.
27 His leadership in training new officers gave my former command,
28

1 the 63rd U.S. Army Reserve Command, many exceptionally qualified
2 Second Lieutenants. He leads by example. I have observed him
3 performing physical training in the soldiers' troop areas. This
4 is a leadership trait, and it is not as common as it should be.

5 General Thrasher has already developed an unusually
6 knowledgeable staff, well-versed in Army programs designed to
7 ensure a high state of readiness. He is a dedicated soldier who
8 is admired and respected by his soldiers, his peers, and many of
9 us who happen to be superior to him in rank.

10 While there are detractors, I suppose so. I have mine
11 also. Frankly, I know of no one in the position of great
12 responsibility who is free of that distinction.

13 When opposition or discontent is manifested, I would
14 hope that it would be based upon a substantive and accurate
15 perception of a shortcoming that was within the full ability of
16 the individual to control and impact, and not some situation
17 which was perceived as a failure after the fact.

18 It seems to be trite but true for general officers that
19 the higher one progresses up the flag pole, the more your rear is
20 exposed. This is something we all live with on a daily basis,
21 and it is also why the exercise of good judgment is an essential
22 element of the general officer's makeup. As I stated earlier,
23 this is one of General Thrasher's strongest positive qualities.

24 Finally, another fact of life in the military hierarchy
25 is that rank has its responsibilities. But rank does not have
26 the responsibility for everything that happens when one is not in
27 command. It is only the commander, the senior ranking person,
28

1 who must claim the ultimate responsibility for everything that
2 occurs during his watch. His subordinates can only be held
3 accountable for those specific areas assigned to his position,
4 and those usually constitute a full plate, but preclude some
5 important areas assigned to others.

6 Mr. Chairman and Members of the Committee, I know you
7 don't need any lecture from me on responsibility, and that was
8 not my intent, for I do have the highest respect for the Members
9 of this Committee. I know you have enormous responsibilities in
10 this largest State in this country.

11 What I have tried to communicate, perhaps not as well as
12 I intended, is that in General Thrasher you have an
13 extraordinarily gifted leader who is mentally, morally, and
14 temperamentally ideally suited to be the Adjutant General for
15 this great State, and a person who will, in my judgment, serve
16 the people of California and this country with high distinction.

17 I respectfully and most enthusiastically recommend and
18 urge his confirmation.

19 Thank you.

20 CHAIRMAN ROBERTI: Thank you very much, General.

21 We will now take opposition witnesses, and if questions
22 are raised regarding particulars, General Thrasher has a number
23 of witnesses who are here on call in case there are particular
24 questions for specific items that might be raised, and the same
25 we would counsel for anyone in opposition. We will give them the
26 same privilege.

27 Right now we'll take general witnesses in opposition.
28

1 The Reporter needs a break. We will take a five-minute
2 break.

3 (Thereupon a brief recess was taken.)

4 CHAIRMAN ROBERTI: The Committee will come to order.

5 Senator Greene.

6 SENATOR GREENE: Thank you, Mr. Chairman.

7 I am here to accompany these two ladies on my left, and
8 I will make some statements regarding this matter, and then turn
9 it over to Mrs. Toni Jordan.

10 Toni Jordan is the wife of Major John Jordan who was
11 killed in a training mission crash over the desert, I believe, in
12 Arizona.

13 Listening to the testimony of the supporters for General
14 Thrasher, there were a lot of generalities and there were a few
15 specifics.

16 Listening to our friend, yours and mine, all of us,
17 B. T. Collins, he talked about the traits of leadership; he
18 talked about readiness, integrity and training. A later witness
19 spoke about safety first, investigation, and confidentiality.

20 The generalities are fine. They tell us we have a
21 wonderful Air Force, a wonderful National Guard; great. I hope
22 that it is accurate.

23 Except it is impossible to say that it is accurate
24 without a blemish, that everybody in the organizations of our
25 military are perfect.

26 The President of the United States is the Commander in
27 Chief of the Armed Forces, whether he ever served a day in the
28

1 military or not, and he has certain responsibilities as the
2 Commander in Chief of the Armed Forces.

3 If a ship hits an iceberg and goes down, no matter how
4 many navigators there are on that ship, the captain is up on
5 charges to see to it that he did conduct his affairs properly, to
6 see to it that his men were properly trained, to see to it that
7 he had taken the proper precautions through the training into
8 areas that perhaps were not his own expertise at all.

9 Does that relate to General Thrasher, yes or no? I say
10 it does. I say it does.

11 He is the man in overall charge. He is in charge of a
12 chain of command. It may very well be that he does not have the
13 expertise relative to the Air Force, relative to the training of
14 airmen, but he has people under him. And those people under him
15 have to see to those things, and he has to be the person
16 reviewed.

17 What happened, for example, when this plane went down
18 and there was a crash? And this Major's wife, Toni Jordan, says,
19 "What happened? I want to know what happened?" Where do they
20 send her for information? To General Thrasher's office. She is
21 told to contact Colonel Pyle in General Thrasher's office.

22 Doesn't that suggest that the buck stops here? Doesn't
23 that suggest that this is the top of the heap? That this is
24 where you go to find out what's going on?

25 So she does try to find out what's going on. And
26 through the Freedom of Information Act, she sends a letter as of
27 October the 13th of last year, 1987, seeking a copy of the report
28 of the investigation of that particular plane crash.

1 Her husband, incidentally, was the armament officer; he
2 was not piloting the plane. There was a Captain piloting the
3 plane, and the question was regarding the training of that pilot
4 before being sent out on that mission.

5 There was a letter here from the acting Chief Officer
6 and so on who says that we have a "sanitized copy", that's the
7 phrase they use, a "sanitized copy" of the report, because of the
8 question of confidentiality. And in that report, one of the
9 things it says is:

10 "Item Two. The concerns expressed
11 about the management of flying
12 operations are in fact ..."

13 such and such,

14 "... and I feel ..."

15 this and that, and there's blank space. There's blank space.
16 But we go on, and we find that in continuing to try to find out
17 about that particular trip at that particular F-4 Fighter, what
18 happened?

19 "The summary of my findings as to
20 the safety of flight and operations
21 management of the 14th are as follows:"

22 Blank paper. She's not privileged to have that information.
23 There it is; take a look at it. That's the report that was
24 available to the wife of this officer killed in the plane crash.

25 What were some of the things that were discussed here to
26 be determined whether they're accurate or not here? I certainly
27 can't say; I wouldn't know.
28

1 There were questions regarding the training of the
2 person who was the pilot of that airplane. He was supposed to,
3 according to the reports, have had six flights in a given year.
4 Two of them never occurred. Two of them did not occur according
5 to Air Force procedures; two of them did.

6 The question was: Was he qualified, then, to fly that
7 particular plane on a low level flight under the conditions that
8 prevailed in that flight sequence?

9 There is every indication from these documents that
10 there was an effort at a cover-up. Some of the documents were
11 altered. I'm not talking just about the -- I'm not including as
12 an alteration the fact that there's some blanks on this paper
13 because of censorship.

14 But when you are told that there is confidentiality,
15 yes, I agree, and I agree that there's a need for confidentiality
16 if it's a matter of saying where you get information from.

17 But is that what this is? Or is this the
18 confidentiality of cover-up, where we remove from your perusal
19 information? You cannot have this information.

20 What is there about a training flight that has the
21 involvement of national security so that you can't find out what
22 happened? Who's the man in charge? Is it not General Thrasher?
23 Is he not on the top of this pyramid?

24 And if you say no, he's not on the top of this pyramid,
25 it's somebody down over here below him, then is he responsible
26 for who's below him? Yes or no? Who's in charge? Who's in
27 charge?
28

1 Now, that's what this is all about: as to who's in
2 charge; what is the responsibility for the man in charge as to
3 the quality of a training program, even though that training
4 program is an area where he is not an expert. Nonetheless,
5 things have gone wrong, particularly out of that Fresno Air
6 Station, went wrong. Okay? What is the responsibility of the
7 man in overall charge at the top of the pyramid?

8 What happens out on the battlefield when something goes
9 wrong? You remove the commander. Who removes the commander?
10 The man in charge. Well, who's going to remove the man in charge
11 under these kind of conditions if he's going to cover up what the
12 battlefield commander did, or if he's going to say, "Hey, don't
13 look at me. It's not my responsibility." Who is in charge?

14 We are here to tell you that we think it's General
15 Thrasher.

16 Now, I want you to hear from Toni Jordan, the wife of
17 Major John Jordan, deceased.

18 Toni.

19 MS. JORDAN: My husband, Major John Jordan, was the
20 Weapons Systems Officer who was killed in the California Air
21 National Guard 4-F accident June 13th, 1987.

22 John had served in the United States Air Force for 12
23 years. He flew 82 combat missions over North Vietnam, and had
24 received two Distinguished Flying Crosses.

25 In 1984, while enrolled in an Electrical Engineering
26 program at Sacramento State University, John was recruited by the
27 California Air National Guard, Fresno, to fly on a part-time
28

1 basis. In June of 1986, he completed the Engineering program,
2 graduating with honors.

3 Two months after the accident, an article appeared in
4 the Fresno Bee. It revealed that the pilot was not qualified for
5 low altitude missions, and that his training records were
6 falsified. The article stated that there had been an
7 investigation of the Fresno Unit in August of 1986 because of
8 allegations that included falsified training records.

9 Since the time of the accident, I have tried to get
10 information and reports. When I did not hear from anyone at the
11 Fresno Unit after the funeral, I placed a call to the commanders,
12 Colonel Carroll and Colonel Boone. It was returned by someone
13 else who had no information.

14 On another occasion when I called with questions
15 concerning the accident, the Unit member told me he did not want
16 to talk about it; it made him too depressed.

17 I have written numerous letters and made frequent phone
18 calls trying to find out how and why my husband died.

19 On Saturday, February 6th, the final investigation
20 report of the accident was delivered to me by Colonel Pyle from
21 the National Guard Headquarters. The report is dated
22 August 20th, 1987. The findings of that report state Captain
23 Deane was not current for a low altitude mission. The pilot had
24 a pattern of limited participation in the last year and has
25 missed seven of the last twelve Unit Training Activity weekends.

26 Action was not taken to increase the pilot's
27 participation. The report states on Page 11 that there was no
28

1 internal quality control measure to ensure accuracy of log
2 entries. Unit supervision and management was a major factor of
3 the accident.

4 It is obvious. The pilot of that plane should not have
5 been flying that day. It is a known fact in the Air Force and
6 industry that the F-4 Phantom has proven tricky to fly at low
7 level and requires a high level of pilot skill to obtain the
8 vital edge needed. The pilot of the F-4 needs frequent practice.

9 Under the Freedom of Information Act, I requested a copy
10 of the August, 1986 investigation report. After many letters and
11 phone calls, I received a sanitized copy. I appealed that
12 decision in December, and after more phone calls, I finally
13 received an unsanitized copy on February 24th. It clearly
14 reveals there was a cover-up of the findings.

15 The Guard had called a press conference in October of
16 1986, stating the allegations were flat untruths, and they were
17 completely satisfied; there is no reason to be concerned; and
18 that the allegations were simple oversights.

19 Some people within the Guard have tried to bring to the
20 attention of those in command the problems, deficiencies, and
21 numerous incidents that have occurred in the past few years.
22 These people tried hard to work within the system to correct
23 problems and prevent the worst possible, a death, from happening.

24 Instead of receiving encouragement and praise, they have
25 been formally reprimanded, forced to retire, or moved out.

26 Since the death of my husband, I feel as though I'm a
27 second-class citizen, not deserving of common courtesy and
28

1 rights. Why should I have to fight for information as to how and
2 why my husband died?

3 John was a patriotic American and was proud to serve his
4 country. He is no longer here to do that, nor is he here to be a
5 husband, a father, or a son. He was killed without cause or
6 justification. There is a little boy that will no longer go
7 jogging with his father.

8 In 1986, General Robert Thrasher was second in command
9 of the California National Guard, and at the time of the accident
10 was first in command. The same circumstances that caused my
11 husband's death had been identified and investigated almost two
12 years ago. Had the authorities acted to change those
13 circumstances, instead of covering them up, my husband and
14 Captain Deane would be alive today. Had those authorities acted,
15 I would not be here today.

16 But I am here, and I'm asking you to do two things:
17 that General Thrasher not be confirmed; and that there be a full
18 investigation conducted of the Fresno Unit and of the California
19 National Guard management.

20 What has happened to us must not happen to another
21 family.

22 CHAIRMAN ROBERTI: Thank you very much.

23 Senator Craven.

24 SENATOR CRAVEN: Mr. Chairman, I wonder, since we're
25 talking specifics here, whether it might not be appropriate to
26 ask General McMerty, who is here from Washington today and who is
27 with the Air Guard, to respond to some questions that perhaps I
28

1 could ask, or other Members could, relative to what action was
2 taken by that command following the accident report.

3 CHAIRMAN ROBERTI: I would say it would be appropriate.
4 I would like to maybe hear the other witness, and then --

5 SENATOR GREENE: That's all.

6 CHAIRMAN ROBERTI: That's it?

7 Then yes, it would be appropriate.

8 SENATOR CRAVEN: I wonder if you'd call General McMerty,
9 Mr. Chairman.

10 CHAIRMAN ROBERTI: General John McMarty, the Deputy
11 Director of the Air National Guard.

12 Senator Craven has some questions for you.

13 The questions on this point, because there are other
14 opposition witnesses, and I don't want to interrupt their
15 sequence of thoughts too drastically.

16 SENATOR ELLIS: Would this be an appropriate time to
17 swear in the witnesses?

18 CHAIRMAN ROBERTI: Senator Ellis would like to know
19 whether we should swear General McMarty in. I would like to ask
20 Counsel before I do that.

21 Why don't you talk to me, and in the meantime we will
22 hear from more of the opposition witnesses. I think that would
23 be an appropriate way to go.

24 Are there other opposition witnesses here? Oh, I have a
25 list.

26 Raymond Hebrank, Major General, Retired.
27
28

1 SENATOR ELLIS: This one has to be because there are
2 specific accusations.

3 CHAIRMAN ROBERTI: I think Senator Ellis wants to have
4 everybody sworn in, so I think we'd better get the Counsel right
5 now before we proceed any further.

6 General Hebrank, if you could just wait a moment.

7 (Thereupon a discussion was held off the record.)

8 CHAIRMAN ROBERTI: I think there's a question before us,
9 and I would suspect that the Committee ought to vote on the
10 matter. That is whether we should swear the witnesses in.

11 If I can relate Counsel's opinion correctly, and as you
12 had indicated, Senator Petris, the difficulty with that is, if
13 for some reason a criminal prosecution results from the testimony
14 that we elicited this afternoon, we would have to grant immunity,
15 except of course for perjury, which wouldn't be covered. I'm
16 saying what the law is and not what the prospects are.

17 So with that, Senator Craven should be here as well.

18 Senator Craven, if you heard, we have one General who's
19 here to answer questions, I would take it, on behalf of General
20 Thrasher; that's General McMarty. And we have to retired
21 Generals, General Hebrank and also General Aguiar, who are here
22 to testify in opposition.

23 Senator Ellis has indicated that he would like to have
24 the testimony under oath.

25 I'm not saying I have a problem with that. The problem
26 with it, however, is that if criminal prosecution should ever
27 result, this is just to speak what the law is, we would have to
28 grant immunity except, of course, if perjury were involved.

1 So I think we have only in the past had one witness
2 under oath, and that's when we had a conflict of opinion as to
3 what occurred at a government meeting on the Department of Motor
4 Vehicles nomination not too long ago.

5 So, I leave this with the Members of the Committee. I'm
6 open to all suggestions.

7 The accusations appear to be, from what I can glean so
8 far, relatively serious.

9 Senator Petris.

10 SENATOR PETRIS: I didn't get a clear understanding as
11 to whether there's immunity or not, first of all.

12 Secondly, my general position is that I don't think we
13 need to put witnesses under oath. It throws a cloud over them
14 right off the bat. We haven't put anybody else under oath.

15 Are we going to put General Thrasher under oath when he
16 testifies? Once we start down the road, you know, is everybody
17 else from here on going to be under oath?

18 I personally would reject the notion, and I would like a
19 clarification on it in case there's some problem of a prosecution
20 somewhere along the line. Do we thereby grant immunity by
21 compelling that the testimony be held under oath?

22 MR. ASHFORD: Senator, your statement about compelled
23 testimony is pertinent.

24 The question is whether or not the testimony is
25 compelled. If it is compelled, then immunity is granted for any
26 fact or act that touches upon testimony that is required to be
27 given by the witness.
28

1 SENATOR PETRIS: So is it a compulsion normally by
2 subpoena? Is that what gives it the --

3 MR. ASHFORD: A subpoena can go towards showing that it
4 was necessary to bring the person before the Committee, but in
5 many cases subpoenas are issued and witnesses appear voluntarily.

6 If testimony is voluntarily given, there is no problem
7 of the Committee inadvertently granting immunity from criminal
8 prosecution because of testimony that may be elicited.

9 Swearing a witness does not in and of itself indicate
10 compulsion, but if --

11 SENATOR PETRIS: All right, suppose a witness is
12 volunteering to come before us. And we say, in effect, "If you
13 want to testify here, you've got to go under oath. Otherwise we
14 don't listen to you."

15 Now, is that compulsion?

16 MR. ASHFORD: Well, it's compulsion in the sense that
17 you're essentially rejecting the person's ability to testify
18 unless they meet your demand. They could argue, yes, that they
19 were compelled.

20 Compulsion really goes to the situation where a witness
21 does not wish to speak to the Committee, and the Committee wishes
22 to hear the witness' testimony.

23 SENATOR ELLIS: Can I just --

24 CHAIRMAN ROBERTI: Senator Ellis and then Senator
25 Craven.

26 SENATOR ELLIS: What we have here is, the General has
27 been and probably will be accused of some acts that could result
28

1 in criminal prosecution: falsifying records; doing some things
2 that resulted in a monetary benefit to others; things such as
3 compelling people to retire; things of that sort.

4 The witnesses, the only thing they would be subjected
5 to, as I see it, is a civil suit by the General against them.

6 I don't see anything in here that's going to require
7 criminal prosecution against the people, except what they are
8 saying puts the General in a position of being prosecuted
9 criminally.

10 That's why I think that he should be given every chance
11 here of having only the truth brought out from this point on.

12 And if you want to put him under oath, I'm sure he'd
13 volunteer to go under oath.

14 CHAIRMAN ROBERTI: Senator Craven then Senator Mello.

15 SENATOR CRAVEN: Mr. Chairman, I don't mean to be
16 simplistic about it, but I just -- my feeling is somewhat
17 different than those that have been expressed.

18 But here you are dealing in the main with officers of
19 the United States Armed Forces. Officers do not lie.

20 CHAIRMAN ROBERTI: Senator Mello.

21 SENATOR MELLO: Mr. Chairman, the problem I have is
22 Senator Ellis requesting this to happen at this point.

23 That gives a clear assumption that the following
24 witnesses who are going to be opposing the confirmation have to
25 be placed under oath because, I think, he's taking the position
26 that we would somehow doubt what they're saying if they were not
27 put under oath.
28

1 I think it's unfair to start now. He should have made
2 this request at the beginning.

3 CHAIRMAN ROBERTI: He did.

4 SENATOR ELLIS: I did; I did.

5 CHAIRMAN ROBERTI: I suggested we wait until --

6 SENATOR MELLO: All right, but I mean, here we are. A
7 lot of people testified.

8 There are times when I wish we'd even put Members of the
9 Legislature under oath, believe me.

10 (Laughter.)

11 SENATOR MELLO: But we don't do that.

12 I think we have to take people for their words. I think
13 I would oppose putting them under oath at this time because I
14 think it places them in a position that we doubt what they may be
15 saying.

16 CHAIRMAN ROBERTI: In fairness to Senator Ellis, this
17 suggestion came at the suggestion of having General McMarty come
18 and testify, and as I understand, he is a proponent and not an
19 opponent.

20 So, we have had witnesses on both sides --

21 SENATOR ELLIS: What we've had before --

22 CHAIRMAN ROBERTI: -- who have not been put under oath.

23 SENATOR ELLIS: -- before, other than Mrs. Jordan, were
24 what I would call character witnesses and informational
25 witnesses, such as Mr. Kenneally, giving us background of how
26 they operate. And the other people were saying, like B. T. and
27 the rest of them, what a great guy he is.
28

1 Those are character-type comments as far as I'm
2 concerned.

3 Now, the General about to come up here is going to start
4 getting into specific points in regards to this accident that
5 occurred, that evidently is the basis for this investigation
6 here.

7 SENATOR CRAVEN: Are you referring in this instance to
8 General McMerty?

9 SENATOR ELLIS: Yes.

10 SENATOR CRAVEN: Well, anything that General McMerty
11 says would be borne out by the record. So, he cannot deviate
12 from what has been established, and therefore he just does a
13 recitation of what the findings may have been. And in my
14 judgment, that of itself would preclude, God forbid, his thought
15 about lying.

16 SENATOR ELLIS: When you made you made your statement,
17 Senator Craven, about "officers do not lie," the news media to
18 your immediate left, one of them threw down his pencil and
19 scoffed and turned around to the audience.

20 SENATOR CRAVEN: Well, he may never have been an
21 officer.

22 SENATOR ELLIS: I am sure he was not.

23 (Laughter.)

24 SENATOR MELLO: The thought that came to mind was Ollie
25 North.

26 SENATOR CRAVEN: Well, nobody has proven that he's
27 lying.
28

1 SENATOR PETRIS: Except he admitted it on the stand in
2 front of Congress under oath. He said, "This time I'm telling
3 the truth. I've been lying in my teeth."

4 CHAIRMAN ROBERTI: We don't have to --

5 SENATOR PETRIS: We don't have to go into that.

6 CHAIRMAN ROBERTI: -- go into Colonel North.

7 MAJ. GEN. HEBRANK: I do not mind being sworn if you
8 desire to go that way.

9 CHAIRMAN ROBERTI: I appreciate that.

10 SENATOR MELLO: I think there should be a motion by
11 Senator Ellis.

12 CHAIRMAN ROBERTI: Senator Ellis, do you choose to make
13 a motion?

14 SENATOR ELLIS: Well, I think I can still count.

15 CHAIRMAN ROBERTI: Do you want --

16 SENATOR ELLIS: I'll withdraw.

17 CHAIRMAN ROBERTI: Senator Ellis withdraws.

18 We now have General McMarty here, but on reflection, if
19 you don't mind, Senator, if we could hear the rest of the
20 opposition and then --

21 SENATOR CRAVEN: I have no objection at all.

22 CHAIRMAN ROBERTI: -- point your questions to General
23 McMarty as a sort of --

24 SENATOR CRAVEN: You know, Mr. Chairman, there's one
25 thing that I would like to bring to your attention. That is that
26 the witnesses testify all say what they believe to be the truth.
27
28

1 The truth is quite frequently subject to interpretation.
2 You may look at it one way, and I may another. The fact that we
3 differ does not, in my judgment, indicate that either one of us
4 is lying.

5 So I think that we should keep that in mind.

6 CHAIRMAN ROBERTI: Thank you.

7 Raymond Hebrank, Major General, Retired.

8 MAJ. GEN. HEBRANK: Mr. Chairman, Members of the
9 Committee, thank you for the opportunity of testifying today.

10 To give you a background of my own military experience,
11 I enlisted in 1968. I was an enlisted man for five years; called
12 up in the Korean War. Went to pilot training, and come back as a
13 fighter bomber pilot, I've been a fighter interceptor pilot. And
14 I did this all as part-time Guardsman.

15 In 1977 [sic], I was appointed as the Operations Officer
16 of the 195th Transportation Squadron, the Transportation Squadron
17 at Van Nuys, and in a two-year period I worked up as the senior
18 full-time commander at Van Nuys.

19 In 1977, I was appointed by then-Governor Brown as the
20 Assistant Adjutant General for the California National Guard. I
21 was also appointed as the commander of the California National
22 Guard. I served in the civilian position, the Assistant Adjutant
23 General, for a period of about two years, and then I became the
24 Deputy Adjutant General for Air.

25 I would like to discuss some of the problems that I
26 experienced in the last two or three years that I was a commander
27 of the Air Guard.
28

1 I was directed by General Shank and Thrasher to promote
2 only those officers they recommended to senior positions in the
3 Air National Guard. They even told me who I could promote on my
4 own staff, and I can give you names if you want those now.

5 Two, the Deputy Adjutant General of the Army Guard and I
6 were directed to report to Thrasher, and if he was not present at
7 the time, I was to report to the Chief of Staff, who was a
8 Colonel. All information from our respective divisions were
9 filtered through Thrasher's office. Each month we worked to
10 provide an update for General Thrasher concerning the activities
11 of our respective divisions -- General Shank, I'm sorry. Shank
12 did not attend those meetings for nine months, even though the
13 date was scheduled for his convenience. Half of the meetings
14 were cancelled. The remaining meetings were attended by and
15 chaired by General Thrasher.

16 The Adjutant General doubled the organizational
17 structure of the top management of the National Guard, and I'm
18 talking about the full-time employees, even during the time that
19 the Governor had asked all departments to cut back in 1983. And
20 I have that document here.

21 General Shank had accused me of promoting only full-
22 time Guardsmen to senior command positions. This simply was not
23 true. Before Shank's appointment, I had placed the following
24 part-time/full-time commanders: I had appointed the first
25 full-time commander in the history of Van Nuys in over a 60-year
26 period, and that was in 1980. I appointed the first part-time
27 commander at Moffett Naval Air Station, and that was in over 20
28

1 years they had had full-time. I also appointed the first
2 Battalion Commander at March Air Force Base.

3 When it comes to part-time Guardsmen, I was charged that
4 -- by Shank that -- I charge that Shank was biased and that
5 Thrasher is following the policies of his predecessor.

6 On the 5th of March, 1988, at Van Nuys, a Change of
7 Command Ceremony will take place. In order for the full-time
8 civil service employee to be considered as a Wing Commander, he
9 had to resign his civil service job.

10 Today, after five years, by reviewing the appointments
11 of Shank and Thrasher, not one full-time Guardsman has been
12 elevated to a senior command position within the Air National
13 Guard. Morale wise this has got to have a devastating effect on
14 the full-time force.

15 To give you an idea where our sister states place their
16 emphasis on in who should be their senior commanders, over 80
17 percent of all Group and Wing Commanders are full-time. In
18 California, 80 percent are part-time. Also, the top two military
19 line officer positions in Sacramento are part-time. All four of
20 the line officer, general officers, are part-time.

21 It had been my policy that part-time and full-time
22 members complement each other. One cannot exist without the
23 other. It is imperative that those who are placed into positions
24 of leadership try to maintain a fair and equitable balance of
25 career opportunities for all of our Guardsmen. I tried to
26 maintain around a 50 percent ratio, and sometimes it goes 60:40.

1 Senior officers were forced to resign or pressured to
2 resign. And I can give you the names of those officers. If you
3 did not resign, they were transferred automatically to the
4 retired list without any recourse. All of these Generals were
5 removed from office without a hearing.

6 I went back in some of the law books concerning -- in
7 the Military and Veterans Code, and it says:

8 "No general officer shall be removed
9 from office except by the Senate on
10 the recommendation of the Governor,
11 stating the grounds on which removal
12 is recommended, or by the decision
13 of court martial in accordance with
14 military custom. No officer of the
15 militia shall ever be removed from
16 office for political reasons."

17 We had six general officers that were removed during that period
18 of time.

19 I had had an agreement with General Allen, who was then
20 the Commander of the 146th Tactical Airlift Wing at Van Nuys,
21 that he would resign February of 1984. General Shank called him
22 to Sacramento in early December, 1983, and abrogated that
23 agreement that I had with General Allen, stating that he did not
24 have to leave. In January of 1984, a member at Van Nuys
25 complained to General Thrasher. Thrasher visited Van Nuys,
26 listened to the complainant and to others recommended by the
27 complainant. Thrasher returned to Sacramento, and General Allen
28

1 was summarily transferred to the retired list. If there were any
2 charges against him, he was not advised of them, nor was he given
3 an opportunity to defend himself.

4 A Lieutenant Colonel Mike McCoy, a complainant of
5 Fresno, sought an investigation against certain members of that
6 Unit. At that point I was told that all personnel decisions
7 concerning Fresno would be deferred to General Thrasher. On the
8 3rd of May, 1984, I was ordered to listen to a wiretap against
9 General Aguiar. When I protested that this was not appropriate,
10 I was threatened with the loss of my job if I did not do so.

11 On the 14th of May, 1984, General Thrasher visited my
12 office and told me that Shank wanted Aguiar's employment
13 terminated on June the 1st of 1984. When I tried to suggest
14 alternatives, I was told, "If you do not do as we ask, you will
15 be looking for another job."

16 Aguiar was never advised of the charges against him nor
17 given the opportunity to defend himself. After seeing Shank's
18 and Thrasher's total disregard for due process, military
19 protocol, and coupled with their relentless pursuit to silence
20 anyone who spoke up, I said to myself, "Enough is enough."

21 I was not going to jeopardize those military principles
22 that I had lived by for over 36 years. I did not need the job
23 that bad.

24 As a subpoenaed witness to the Sebra trial, I was asked
25 in court if his transfer was in the best interests of the Air
26 National Guard. My answer was no.

27

28

1 Many of my colleagues at the time told me that I should
2 sing the party line and wait for better times. Some of them are
3 here today, but someone at the time had to stand up and be heard.

4 Ten days after the trial, I was ordered to resign. I
5 refused to resign, believing the purpose of the truth was to seek
6 the truth and not be punished for telling the truth. In the end
7 I lost my job but kept my self-respect.

8 The Military Department's news release concerning my
9 departure was:

10 "General Hebrank has reached the age
11 and time in service when, if they are
12 on active federal duty, they will have
13 retire. The Defense Department usually
14 forces similar retirements of State
15 Guard officers by withdrawing federal
16 recognition of their military rank."

17 The truth of the matter was that I had two-and-a-half years to go
18 with the regular Air Force. Today I am currently in the Air
19 Force Reserve. The man who replaced me was 55½; I was 56. He
20 today is 57½, and no forced retirement in sight.

21 Thank you very much.

22 CHAIRMAN ROBERTI: Thank you very much, General Hebrank.

23 Maybe we'll hear from General Aguiar now and reserve
24 questions.

25 BRIG. GEN. AGUIAR: Mr. Chairman and Senators, before --
26 I have a prepared statement, but I thought I'd make a statement
27 that I had to do on the spur of the moment.
28

1 This morning the Fresno Bee had an article disclosing
2 the investigation conducted against me in 1984. I have a request
3 dated in 1984 for that information under the Freedom of
4 Information Act, and I was refused that document based on
5 criminal charges.

6 I would like to enter that request into the record with
7 your permission, sir.

8 CHAIRMAN ROBERTI: Yes.

9 BRIG. GEN. AGUIAR: I would also like to point out --

10 CHAIRMAN ROBERTI: Do you have an extra copy?

11 BRIG. GEN. AGUIAR: Yes.

12 CHAIRMAN ROBERTI: We'll take it now; the Sergeant will
13 take that.

14 BRIG. GEN. AGUIAR: I still have not been told those
15 charges.

16 I would also like to point out, if this in fact is an
17 investigation, I have not comment. But if it's a hearing of a
18 political appointee, such as Mr. Thrasher, I would like to point
19 out that Air Force people in this chamber with those uniforms on
20 are in direct violation of public law and Department of Defense
21 directives. And that includes General McMerty, who's on Air
22 Force status, and he is not allowed to be in any political
23 situation such as this if that's the way the Committee concerns
24 that. And if not, the interpretation is such, then I withdraw
25 that statement, sir.

26 CHAIRMAN ROBERTI: Senator Ellis.
27
28

1 SENATOR ELLIS: Yes, we checked into this this morning
2 to find out, and I think it would be appropriate -- you have a
3 JAG person here, do you not?

4 BRIG. GEN. AGUIAR: May I object to that JAG. He's the
5 one that convicted me without giving me due process.

6 (Laughter.)

7 BRIG. GEN. AGUIAR: It would serve no purpose to ask
8 him.

9 (Applause.)

10 BRIG. GEN. AGUIAR: I'm sorry, Mr. Chairman.

11 CHAIRMAN ROBERTI: Please keep your opinions to
12 yourselves in the audience.

13 SENATOR ELLIS: Then I will defer to the Chair.

14 Mr. Kenneally, would you assist us since there's some
15 animosity?

16 ASST. SEC. KENNEALLY: Mr. Chairman, first, it is
17 authorized, and it has been proved [sic] by the Office of General
18 Counsel of the United States Air Force and the Judge Advocate
19 General according to Air Force regulations prior to our leaving
20 Washington.

21 So, contrary to what General Aguiar has said, there are
22 provisions in the Air Force regulations for members of the Air
23 National Guard or the active Air Force, for that matter, as well
24 as civilians in my capacity to appear before local or State
25 government jurisdictions or legislative bodies to offer
26 testimony, and that is what we're here for and it has been
27 approved.
28

1 SENATOR ELLIS: And in addition to that, I was told that
2 you are prohibited from appearing in uniform for partisan
3 political activities, such as fundraisers, rallies, parades, and
4 things of that sort.

5 Is that correct?

6 ASST. SEC. KENNEALLY: Yes, sir, that is correct, and
7 this is a confirmation hearing, and as such we're offering
8 testimony, and General McMerty in particular is offering expert
9 testimony.

10 SENATOR ELLIS: Thank you.

11 ASST. SEC. KENNEALLY: Yes, sir.

12 CHAIRMAN ROBERTI: General Aguiar.

13 BRIG. GEN. AGUIAR: There exists today serious problems
14 in the California National Guard and the Air National Guard. The
15 current leadership in the State Military Department has been
16 grossly negligent in the performance of their duties. Robert
17 Thrasher and his key senior staff have been involved in a series
18 of incidents which raise questions regarding their lack of
19 professional and moral integrity.

20 On numerous occasions there have been displayed an
21 outright disregard for Constitutional procedural rights of
22 officers under their command. When Thrasher has had the
23 opportunity to intervene and assure that the rights of all
24 parties have been protected, he has deliberately chosen not to do
25 so. Some issues involved removal and/or transfer of officers who
26 had been given no due process, whose status' are affected because
27 of charges about which they were never informed, and whose
28

1 careers in the National Guard have been ruined because of
2 disfavored status with Thrasher. These deprivations continue
3 today.

4 Thrasher was a party to an illegal use of a telephone
5 conversation recorded by Lieutenant Colonel Mike McCoy. I want
6 to clarify that point, the use of it. I don't want to get into
7 the hassle of if it was right or wrong, sir.

8 His involvement in various incidents includes:
9 violations of State and federal regulations; the Uniform Code of
10 Military Justice; the California Military and Veterans Code; and
11 the U.S. Constitution.

12 Thrasher lacks the qualifications to run the State
13 Military Department. He has not prior command experience other
14 than one year he gained in a contrived scheme to assist the
15 promotion to Brigadier General. The 26,000 men and women in the
16 California Army and Air Guard deserve more.

17 Under his leadership during the past year, California
18 Air National Guard experienced the worst aircraft accident rate
19 in its history. Although the California Air National Guard
20 represents only 5 percent of the flying units in the country,
21 they were responsible for 60 percent of the accidents. These
22 accidents accounted for a loss of three aircraft and included
23 four fatalities.

24 At the request of Congressman Charles "Chip" Pashayan,
25 the National Guard Bureau Special Investigation Group was sent to
26 investigate allegations of safety management deficiencies. They
27 found areas of significant concern during their investigation.
28

1 The Trip report, written by Osgood to Brigadier General John
2 McMerty and released to the press, was in direct contradiction to
3 the report written by Colonel Larry Arnold of the team. Osgood's
4 report downplayed the significance of the problem, while Arnold
5 expressed serious concerns. Only months after that
6 investigation, an accident occurred consistent with Arnold's
7 assessment of the problem.

8 Efforts to expose these and other problems through the
9 system have been defeated because Thrasher, even after being
10 advised of the management and safety deficiencies that existed at
11 the Fresno ANG Base, he failed to take any corrective action.
12 These management and safety problems still exist today.

13 Thrasher has displayed a callous disregard for the
14 procedural requirements of his position and has operated solely
15 to benefit himself and those displaying absolute loyalty to him,
16 and many of those people are in this room today.

17 If Thrasher's confirmed, he will continue to operate
18 with immunity from judicial and political review, and it's
19 anticipated he will exercise even greater liberties in
20 disregarding the rights and careers of National Guard officers.
21 Until this "good ol' boy" network is broken up, resources will
22 continue to be misused, damaged or destroyed, careers will be
23 ruined. Unnecessary loss of life from safety deficiencies will
24 continue.

25 But in all fairness, to give Bob Thrasher an opportunity
26 to respond to these charges, I am respectfully requesting full
27 investigation of these and other allegations. Only then can
28 there be a complete resolution of these problems.

1 The integrity of the California Air National Guard is at
2 stake. And I'm recommended he not be confirmed as the Adjutant
3 General, Director of the Military Department.

4 Thank you.

5 CHAIRMAN ROBERTI: Thank you very much, General Aguiar.

6 I might ask a question on the wiretapping of General
7 Aguiar.

8 Could you share with us what the reason was for the
9 taping of that conversation, General Thrasher?

10 GENERAL THRASHER: In 1983, I was approached by a
11 Lieutenant Colonel Mike McCoy, who was a fighter pilot with the
12 Fresno 144th Fighter Interceptor Wing. He's in the audience
13 today.

14 He had a series of allegations directed at the gentleman
15 on my right, saying it was being mismanaged; that he was using
16 full-time personnel, not letting part-time air people
17 participate, and had a whole series of misuse of funds, improper
18 purchase of furniture, giving away of equipment, and a whole
19 series of other items.

20 In that discussion in September of 1983, he indicated --
21 I said, "Why are you coming to me? We have a process, it's call
22 the Inspector General, and if it needs to be surfaced, you
23 shouldn't be talking to me." He said, "I'm only coming to you
24 because I've resigned and the chain of command's the problem.
25 I'm willing to make that sacrifice." And I says, "I will not act
26 on any of those without proof." We just don't conduct
27 investigations based upon your word.
28

1 He visited me later in November of that same year and
2 had a series of documents that high, and some substantiation and
3 some not.

4 One of the allegations he gave to me was that he had
5 been threatened by the man on my right. And I said, "Well, did
6 somebody witness it? Do you have proof?" And he says, "I taped
7 a conversation, two conversations." And I said, "I don't know
8 anything about taping conversations, but would you be willing --
9 I don't know if it's legal, illegal, or what."

10 I did not participate in him arranging for the tapings.
11 Nevertheless, he sent those tapes to me in November. I listened
12 to them; my boss listened to them; General Hebrank listened to
13 them; a lot of people listened to them.

14 They were not used in any way in part of the follow-on
15 investigation. Incidentally, one of the inspectors was a
16 Sacramento County District Attorney who is also in this room
17 today who would be happy to address the issue. Was not used. It
18 was subsequently picked up, the tapes were, by the Fresno Police
19 Department. And as I understand, General Aguiar filed charges
20 against Colonel McCoy and they were dropped by the Fresno
21 District County [sic].

22 I would like, sir, with your permission to bring Colonel
23 McCoy to the podium and have him address exactly why he did it
24 and when he did it.

25 CHAIRMAN ROBERTI: Yes, Colonel McCoy.

26 GENERAL THRASHER: And further, if I could, as a
27 follow-on, I'd like the Sacramento County District Attorney who
28 is here to also address the issue.

CHAIRMAN ROBERTI: John Dougherty, Lieutenant Colonel in the National Guard, also District Attorney of Sacramento County. Colonel McCoy.

MR. MCCOY: My name's Mike McCoy.

I don't have a prepared statement, but I've got plenty else, I guess.

A little history on myself, if I may start there. I joined the Guard on the 27th of November of 1962, and three weeks later I was given a direct commission into the pilot training program as a Second Lieutenant.

I came back to Fresno and I spent approximately 21 years out of my time as a weekend Reservist. Some people call us weekend warriors.

At the same time I am presently flying 747 aircraft for a major airline.

On August the 26th, I resigned and walked off the base. At that time I held the position of Operations Officer of the Fighter Squadron. Before I did this, I spent approximately a year trying to correct situations that related to three men: General Aguiar, Colonel Hollenbeck, and Major Nelson Sebra.

I went through the people, my squadron commander, who was my immediate supervisor. I went to the DCO, Deputy Commander. I went to the Vice Wing Commander. I went to the Wing Commander. I talked to all of these men. I talked until I was blue in the face. Either people didn't care or they were complacent. I've got a letter to that effect which I sent to all the pilots which General Aguiar said he was going to have my head up on that for charges, too.

1 People were either complacent, they were scared to
2 death, or just didn't care. So I walked off the base.

3 And when he talks about destroying his career, I left 21
4 years, and it made me very unhappy, but I took it and left. Had
5 no choice. When he says he has no choice --

6 From there, for the next three or four days I received
7 numerous calls from pilots, airmen, women, that were concerned
8 about my leaving the base. I'm a very well respected person and
9 an officer. So I fired out a letter. Took me two days and two
10 nights to write this letter, and it's not real dynamite, but it
11 gets right to the crux of the matter.

12 And I hear so many words here said today by various
13 people that are right out of my writings, and I can't believe it.
14 I criticized the base because of the concern that the Unit was
15 divided between the Reservists and the air technicians, and even
16 more severe, the air technicians versus air technicians.
17 Complacency -- I won't read the whole thing.

18 "The officers who placed more emphasis
19 on their own self-advancement in the
20 Air National Guard rather than the
21 importance of the Guard being a viable
22 force, tasked with training and preparing
23 for the defense of this country. And we
24 talk about air technicians, Reservists,
25 and command, and obligations,
26 responsibilities."
27
28

1 And then we talk about the two men, the Wing Commander at that
2 time, after me in my capacity, and other people allowed them to
3 come through the back door, and that's one of the charges I made
4 when I brought this forward.

5 It seems to me that there were two groups trying to lead
6 the Unit and both were failing, not only in the mission but also
7 the people and the Unit.

8 "Guidelines should be established as
9 to who in the chain of command has
10 authority, and how the authority will
11 be delegated. Until the guidelines
12 are established, the Unit will float
13 along and be in constant discontent
14 and turmoil. The chain of command
15 should be re-established."

16 There was no chain of command. There was no command authority at
17 this time.

18 "Vice Wing Commander, the Deputy Commander
19 of Operations and the Squadron Commander
20 cannot function if they are constantly
21 undermined."

22 End of this paragraph.

23 "In my opinion, until the program of
24 self-advancement through abuse, deceit,
25 intimidation, harassment is eliminated,
26 then and only then will there be a
27 sense of direction and mission
28

effectiveness for the 144th Fighter
Interceptor Wing."

And that's why I submitted my resignation. That was August the 26th.

August the 31st, I sent out the letter. September the 3rd, at this time I had a phone tap on my phone. I have a recording of that, and I'm going to turn it over you if you so desire.

SENATOR ELLIS: Can I interrupt?

CHAIRMAN ROBERTI: Senator Ellis.

SENATOR ELLIS: You used Wing Commander, Squadron Commander, things like that, but no names. I don't know who you're talking about.

MR. McCOY: The Squadron Commander was Colonel Carroll at the time, and the Wing Commander was General Aguiar. General Aguiar was the Wing Base Commander. He held two hats.

SENATOR ELLIS: He was the boss of Fresno?

MR. McCOY: He was the boss, both air technician and Reserve wise, weekender wise.

SENATOR ELLIS: When you say "complacency" and things of this sort, you're referring to him?

MR. McCOY: I'm putting those on his shoulders, yes.

SENATOR ELLIS: Thank you.

MR. McCOY: September the 3rd, General Aguiar called me at home. That's the tape right there. And he took -- well, he didn't like the letter. He took acceptance [sic] to the letter.

1 September the 5th, General Aguiar flew to Sacramento to
2 Major General Hebrank to give him a copy of that letter. As he
3 passed over my house, I was out mowing the yard, and he lifted
4 the after burners just to let me know --

5 CHAIRMAN ROBERTI: He what?

6 MR. McCOY: He lifted the after burner, which is a big
7 noise that puts extra thrust up into the airplane. So, that's
8 letting you know that he's on his way. That's real fine.

9 I have some other documents here, but that doesn't
10 really matter.

11 Again on September the 20th or 21st, I couldn't document
12 that. That was one of those days General Aguiar again calls me.
13 That's this tape. And this is the one that the threats are on.
14 I can brief you on a few of those threats if you'd like, or you
15 can listen to them. It's up to you, sir.

16 CHAIRMAN ROBERTI: You might brief us.

17 MR. McCOY: He talks -- I have that letter in here -- I
18 don't think I have that in here, but I can remember off the top
19 of my head.

20 He talks to me about the loss of the jobs and the
21 security of people in the Guard. He uses the terms like, I might
22 not lose any flesh off me, but he could take 25 pounds off of
23 maybe some of the people out there, the ones that are home with
24 their families right now that don't know what's going on. Those
25 are his exact words.

26 He also alluded to the fact that he had an ongoing
27 investigation from prior years when he was commander up at
28

1 Moffett, that this man had charged, and he kind of laughed and
2 said, "You know, Mike, that's been going on for five years, and
3 you know, the man's dead now." I don't know what I'm supposed to
4 think of all of these.

5 Anyway, I did come up and see General Thrasher, and I'll
6 have to back up on that on the 16th. I talked to General
7 Thrasher for about 2-2½ hours. I could see the man wanted to
8 listen to me; he did listen to me. But as he said, he had
9 nothing really to go on. Just a conflict of differences about
10 how to run an Air Base, and where there's authority and command.

11 Anyway, he did look at me at the end of the session and
12 he said, "Mike, where're you going from here?" I said, "Well,
13 sir, I have no place to go except the Inspector General of the
14 Air Force now." And he said, "Well, tell you what. Why don't
15 you bring it back here if you have anything, and we'll keep it in
16 the house and look at it." That's exactly what I did. That was
17 three months later by the time I got all this put together.

18 CHAIRMAN ROBERTI: What year was that?

19 MR. MCCOY: I beg your pardon?

20 CHAIRMAN ROBERTI: Which year was that?

21 MR. MCCOY: This is still in 1983. It's all 1983.

22 I have letters here that I've addressed to General
23 Thrasher about the change in the direction of the Air National
24 Guard as it relates to the weekend Reservists and the air
25 technician force. I go on and on. He's been accused -- I've
26 seen in the paper that he has led me in this investigation, and
27 General Thrasher has not tried to do that.

1 No one has tried to do that, and no one will do that.
2 I'm not that kind of a man. Those tape recordings, I put the
3 machine on my phone and I recorded them, and no one else was
4 responsible but me. I will stand behind that in a civil court or
5 a military court.

6 Something else on the tapes. He says, "This won't come
7 out in a military court. It will be in a civil court." My IRS
8 records would be looked into. It goes on and on.

9 Same time this happened, this is the documentation of
10 it, my IRS records would be looked into, all facets of my
11 friends' lives looked into. Even if I'm clean, my pilot friends'
12 lives are not. Lieutenant Colonel Hollenbeck and Major Sebra may
13 lose a pound of flesh, but 25 other pilots will lose up to 15
14 pounds of flesh each. My civilian job would be put in jeopardy.
15 I would have legal suits filed against me in civil courts. I
16 probably would be charged with going out of the chain of command.
17 And then Brigadier General Aguiar related the legal suit of Major
18 General Hebrank and the fact the suit took approximately \$25,000
19 and four years to complete, and he said General Hebrank beat them
20 all, hands down.

21 He also mentioned there were secret files kept by
22 Lieutenant Colonel Hollenbeck and Major Sebra, and those files
23 would not be brought out in a military investigation but in civil
24 proceedings.

25 Again, documentations --

26 CHAIRMAN ROBERTI: What year was General Aguiar in
27 charge of the Fresno Base?
28

1 MR. McCOY: I believe it was 1982 through -- you would
2 know that, sir.

3 BRIG. GEN. AGUIAR: February, 1982 through May of 1984,
4 I believe.

5 MR. McCOY: Threats by these two men that I accused in
6 this publication. If anyone wants a copy of it, most of it's
7 there. Most of it's there.

8 Lieutenant Colonel Hollenbeck, on the 20th of September,
9 same time this call was made, in the front of another officer and
10 officers said, "I'll tear this place apart. I got stuff on
11 everyone. No one will escape my wrath. When an air technician
12 and a weekender have it out, the air technician comes out with
13 his job intact. There has always been a spy in Operations for
14 three years now." And then he states, "I always thought an
15 Airman would turn into the pay days and not an officer," whatever
16 that means.

17 Again on the 20th of September, Lieutenant Colonel
18 Hollenbeck stated to Colonel Caser that if McCoy presses charges,
19 my civilian job would be put in jeopardy; IRS would be reported
20 for unreported income; my sex life would be looked into; chain of
21 command again; that they were all mean men; and the secret files
22 again.

23 Lieutenant Colonel Hollenbeck went to Major Heers and
24 Major Dennis again on 21 September to try to talk me out of
25 bringing the charges. The second phone conversation from General
26 Aguiar goes from period of pleading, to force, to just trying to
27 talk to me, caring for me, to try to get me to drop the charges.
28

1 I wouldn't do it because I could see there was nothing going to
2 change. That's just the way it's been all these years. It
3 wasn't going to change.

4 Again the flesh thing, whatever that means. Again
5 another one from Colonel Caser about Lieutenant Colonel
6 Hollenbeck stated, "Colonel Caser, frankly I'm just trying to
7 scare you."

8 SENATOR ELLIS: Mr. Chairman, I've forgotten what the
9 question was.

10 (Laughter.)

11 SENATOR ELLIS: I'm sorry.

12 CHAIRMAN ROBERTI: The question was regarding the taping
13 of General Aguiar, and I think the allegation is that General
14 Thrasher may have had something to do with that.

15 Mr. McCoy.

16 MR. MCCOY: And as I stated --

17 CHAIRMAN ROBERTI: That that is not the case.

18 MR. MCCOY: -- that I am the only one responsible.
19 General Thrasher did not even know about the first tape. He did
20 not know about the second tape until I told him. I think he was
21 very surprised.

22 SENATOR ELLIS: I think that answers it; doesn't it?

23 MR. MCCOY: Then there's one other, sir, if I may.

24 He's also been accused -- General Thrasher -- of leading
25 me, or me leading the investigation.

26 I have all these letters that I have written to General
27 Thrasher. I have -- because Royal Calkins, with the Fresno Bee,
28

1 reporter, called me one night and gave me 16 items, I fired off a
2 letter to Governor Deukmejian because I have come from the point
3 of not trusting anybody on the Air side. And that's been brought
4 out in this hearing. I went to General Aguiar, and from there I
5 skipped even the IG, who was Colonel Bates at the time, and I
6 asked for an audience with General Thrasher, which was not -- I
7 didn't go through him. I went through his aide, and I was
8 granted that. I have --

9 CHAIRMAN ROBERTI: Why don't we proceed.

10 Thank you, Mr. McCoy, and we might ask you some more
11 questions.

12 Why don't we proceed to District Attorney Dougherty, and
13 after that we have another opposition witness, General Jerome
14 Shinaver.

15 MR. DOUGHERTY: Mr. Chairman, Members of the Committee,
16 John Dougherty, I'm the District Attorney of Sacramento County.
17 I'm a Lieutenant Colonel in the National Guard, Commander of the
18 170th MP Detachment. That's a criminal investigation division.

19 I joined the Guard in 1974, and prior to that I was six
20 years as a regular Army officer.

21 Sometime in late -- in November of 1983, I was called up
22 to the Headquarters by General Thrasher. General Thrasher
23 indicated to me that complaints had been made against certain
24 people down in the Fresno Air Base by Mr. McCoy. And one of the
25 questions he had, one of the major concerns he had, was that two
26 tapes had been submitted to him, and he was concerned whether
27 those tapes were legal, what were the consequences of the tapes.
28

1 I indicated to him that they were, in my opinion,
2 without listening to them, they could or could not be illegal,
3 but there was an exception for taping conversations by one of the
4 parties to a confidential communication if at the time, I said,
5 if he has a belief it was either something to do with extortion
6 or was a threat against him, then the tapes -- then the
7 individual could tape the telephone conversation if there were
8 threats. I said if those facts existed, then the tapes, in my
9 mind, would be legal.

10 At a subsequent time, I listened to the tapes, and it
11 was my opinion at that point that they were not an illegal
12 taping. They fit under the Penal Code at 633.5, I believe.

13 At a subsequent time I was told that the tapes would not
14 be used. But that was the opinion that I gave to General
15 Thrasher and General Shank. They were concerned about the
16 legality of the tapes. I indicated to them that there was an
17 exception under the Penal Code for the taping of a confidential
18 communication by one party to the communication if he had a
19 belief that there was a threat or extortion -- if the phone call
20 was being used as a threat or an extortion.

21 CHAIRMAN ROBERTI: Thank you, Mr. Dougherty.

22 Senator Mello then Senator Petris.

23 SENATOR MELLO: Thank you.

24 I just wanted to clarify in my mind about the taping of
25 phone messages.

26 I understand, and maybe you can recite it, that there is
27 one law dealing in interstate taping where communication across a
28

1 state line comes under a federal code, and then within the state,
2 it would come under the State law.

3 I understand that at least one of the persons to a
4 conversation has to be aware of the taping within the State.
5 Naturally, the one that puts the tape on is aware of it.

6 Is that the law, or do you --

7 MR. DOUGHERTY: The California Penal Code is in the 600
8 series, and it prohibits -- it's not a true wiretap. A wiretap
9 generally is a third-party intrusion, intruding upon two
10 unknowing parties.

11 SENATOR MELLO: Right.

12 MR. DOUGHERTY: Under the California law, one party to a
13 confidential communication can tape that under the specific
14 exceptions of if he reasonably believes that the call represents
15 a threat or an extortion or a nuisance.

16 There's another exception for that type of taping for
17 law enforcement investigations also, but under the specific facts
18 of this, in this particular situation, it seemed to me that Mr.
19 McCoy was within the exception under the 633.5.

20 SENATOR MELLO: One person could tape without advising
21 the other person that they're being taped?

22 MR. DOUGHERTY: They can. They take the risk when they
23 tape and not tell the other person, they take the risk that
24 they're not within that exception. They have to have a
25 reasonable belief that the phone call is being used for
26 extortion, or threats, or nuisance. And if they have that
27 belief, then they're allowed the exception, to my understanding
28 of the 633.5.

1 SENATOR MELLO: But just a friendly conversation or a
2 business conversation cannot be taped?

3 MR. DOUGHERTY: No.

4 SENATOR MELLO: What about interstate? Are you aware --

5 MR. DOUGHERTY: That would be under the federal law, and
6 I've really not sufficiently researched that.

7 SENATOR MELLO: In this case was there a threat
8 involved?

9 MR. DOUGHERTY: In my mind there was a threat, yes. I
10 haven't heard those tapes since 1983, but there was -- I remember
11 the threats. Certainly the threats of going to the IRS, going to
12 the employer, those things I remember.

13 SENATOR MELLO: I guess these answering machines and the
14 beeping is the one that makes both parties aware that the message
15 is being taped, and that complies with the law as well then.

16 MR. DOUGHERTY: Right, both parties at that point are
17 consenting to the taping.

18 SENATOR MELLO: Thank you.

19 CHAIRMAN ROBERTI: Senator Petris.

20 SENATOR PETRIS: This taping, a legal question came up
21 last week at our other hearing.

22 These tapes, as the Colonel indicated, found their way
23 down to the Fresno Police Department. Their report indicates
24 they didn't hear any threat.

25 There seems to be a difference between the Military Code
26 and the Penal Code, so I need to get some clarification from you,
27 first as a civilian.
28

1 Under what exception in the Penal Code Section did you
2 conclude that the tapes were legal? Was it under the threats, or
3 extortion, or fear of it, or what?

4 MR. DOUGHERTY: I felt there were threats there.

5 SENATOR PETRIS: What did they consist of? The IRS
6 comment?

7 MR. DOUGHERTY: The threat said he was going to go to
8 the IRS. The threat that he could go to his employer. The
9 threat that he was going to -- there were some threats about
10 bringing his life -- ruining the lives of his friends, like he
11 said.

12 I would have to listen to the tape again to focus more
13 particularly on it. I haven't listened to it since 1983.

14 SENATOR PETRIS: Are you familiar with the Fresno Police
15 Report?

16 MR. DOUGHERTY: No, I'm familiar with a report from the
17 Fresno District Attorney's Office, but not the Fresno Police
18 Report.

19 SENATOR PETRIS: Did they have similar conclusions?

20 MR. DOUGHERTY: The Fresno District Attorney's Office
21 agreed with me. They quoted the Penal Code. At the time I gave
22 the advice to General Thrasher and General Shank, I did not have
23 the Code with me. I had worked in the Special Investigations
24 Unit of our office and in the Narcotics Unit, and we were
25 familiar with the taping requirements.

26 SENATOR PETRIS: So you weren't basing it on the
27 Military Code?
28

1 MR. DOUGHERTY: I was basing it primarily on the Penal
2 Code.

3 SENATOR PETRIS: Of course, the General has told us he
4 didn't use that tape in any investigation anyway.

5 GENERAL THRASHER: That's correct. We did not -- that
6 was not turned over as evidence as part of the investigation. In
7 fact, was held in our office until it was picked up by the Fresno
8 Police Department.

9 SENATOR PETRIS: Thank you.

10 CHAIRMAN ROBERTI: Thank you very much, Mr. Dougherty.

11 MR. DOUGHERTY: Thank you, Senators.

12 CHAIRMAN ROBERTI: On other questions that were raised
13 by General Hebrank, and that is that you, General Thrasher, have
14 forced people to resign who tried to uncover mismanagements.

15 Could you comment on that?

16 GENERAL THRASHER: I could comment that I don't know --
17 that I don't recall forcing anyone to resign who were uncovering
18 mismanagement anywhere. I don't know what he's referring to.

19 CHAIRMAN ROBERTI: General Hebrank, do you have any
20 specific cases?

21 MAJ. GEN. HEBRANK: Yes, I do, May I come up?

22 CHAIRMAN ROBERTI: Yes, please.

23 MR. McCOY: May I be excused?

24 CHAIRMAN ROBERTI: Yes, you're excused. Thank you, Mr.
25 McCoy. If you don't mind, leave the tapes with us -- no, no,
26 please don't. Counsel says no, so please, you can have your
27 tapes.

(Laughter.)

1
2 GENERAL THRASHER: This has to do, again Mr. Chairman,
3 with mismanagement and my ignoring mismanagement, or firing
4 people because they mismanaged?

5 I'm not sure what the question or allegation is.

6 CHAIRMAN ROBERTI: Yes, General Hebrank.

7 MAJ. GEN. HEBRANK: I'm sorry. I had this on my lap
8 back there and it's sort of gotten out of order.

9 While I get my papers in order, may I make a comment
10 concerning the last statement concerning the tape and how it was
11 used?

12 I have from my notes of my journal on 3 May, 0730 hours,
13 General Shank told me that I had to talk to General Thrasher
14 concerning the Fresno investigation.

15 Now, two weeks or a few weeks prior to that, they asked
16 me to go ahead and view the investigation report, which is over
17 700 pages. It took me at least a week to read that, and then, as
18 soon as I got through reading it, I was asked to come down and
19 discuss the issues and the merits of the investigation.

20 I was never given that opportunity.

21 GENERAL THRASHER: I would -- if I can just add to that.

22 My former boss is here, the former Adjutant General
23 Shank. He told me the decision to remove General Aguiar was not
24 based on the investigation. It was based upon his belief that he
25 has -- he had lost confidence in General Aguiar's ability to
26 command the organization, and in fact did not approve the
27 investigation. He never did sign it, simply made the statement.
28

1 I'm speaking for him. He can speak for himself.

2 But the investigation seems to be the big issue here.
3 General Shank's decision to remove General Aguiar according to
4 his own statement is that he did not use that investigation as
5 the basis for the removal of General Aguiar. You may want to
6 hear from General Shank.

7 MAJ. GEN. HEBRANK: I was never, as a Commander of the
8 California Air National Guard, I was never told that. I was
9 removed from all thoughts and considerations and responsibility
10 concerning that investigation.

11 During -- after I'd read the investigation, I learned
12 that I was also under suspicion and that I was accused of
13 improprieties. The thing that I was accused of was that I had
14 received or had the Fresno Air National Guard Base buy a brand
15 new helmet, and that's a flying helmet, at the federal government
16 expense, and it was painted at federal government expense.

17 I learned about that when I read the investigation. No
18 one asked me about those charges or allegations. If they had, I
19 would have told them that it was an Air Force issue, that I got
20 it at March Air Force Base, and it was painted at private
21 expense. Because of that reason, I believe that's why I was
22 excused from the overall supervision or involvement in the
23 investigation that went on at Fresno.

24 Now, concerning the tape, at 0900 hours, Thrasher asked
25 Elaine, who is his secretary and General Shank's, to get the tape
26 out of the safe. I asked Thrasher if that was the Aguiar tape.
27 He said it was, and he wanted me to hear it. I politely
28

1 declined, stating I did not consider it appropriate, and that I
2 wanted to discuss the merits of the investigative report. He
3 told me Shank wanted me to hear this tape. I again declined.
4 Thrasher said if I did not listen to this tape, Shank would go to
5 Fresno, fire Aguiar, hire a replacement, and come back and look
6 for me -- a replacement for me. At that point I listened to the
7 tape.

8 Okay, on the 4th of May, 8:30 hours, Aguiar called
9 General Thrasher's office and said that he wanted to talk to
10 General Thrasher concerning the problem that was going on.
11 Aguiar felt good about that conversation and said it appeared
12 that everything was going okay.

13 On the 14th of May, General Thrasher came to my office
14 to inform me that I was to terminate Aguiar's employment
15 immediately. He either retires or is terminated, also he must
16 vacate his office 1 June 1984 because of the investigation. I
17 told him it was only fair that Aguiar be given an opportunity to
18 discuss those allegations and charges against him. I was then
19 informed that Shank wanted this done or action taken, and if I
20 did not do so, Shank would. Thrasher stated after Aguiar's
21 termination they would look to me in my position if I did not
22 take this action.

23 CHAIRMAN ROBERTI: Was that your recollection, General
24 Thrasher?

25 GENERAL THRASHER: Not in the least is that my
26 recollection, no, sir. It is not my recollection.
27
28

1 I never in my life threatened this man's job. I will
2 swear on a stack of Bibles under oath and under any other
3 circumstances that I never threatened to remove this man from any
4 position.

5 He's either lying -- no, I'm not going to -- no, the
6 answer is no. No, sir.

7 MAJ. GEN. HEBRANK: I'm sorry to hear you say that, Bob,
8 because it is the truth.

9 GENERAL THRASHER: I'm sorry to hear you say it, sir.

10 MAJ. GEN. HEBRANK: What I have said is the truth. You
11 did threaten me with my job and you did it on two occasions.

12 Okay, let's talk about the commanders that I was told
13 that I could promote, and I could only promote those that they
14 recommended. One was General Hall, General Bates, Colonel Zuick
15 [phonetic], and Colonel Brody.

16 Now, I'm the line officer, the Commander at the Air
17 National Guard, and I am told who I must promote and who I must
18 have on my senior staff.

19 General Bates' situation, it was filled by a name [sic]
20 by a General Johnson. I had had an agreement with General
21 Johnson to stay until June of 1984 -- '84 or '85; it's one of
22 those years. I was told to go ahead and ask Johnson to leave,
23 that they were afraid that General Bates was going to lose his
24 federal recognition. I said as the Assistant Adjutant General
25 position he would not lose the federal recognition of his
26 position. I was asked to go ahead and see if I could work out an
27 agreement with him. I said, "I don't think it's fair. I'm not
28 going to approach him. I have an agreement with him."

1 In disgust, General Johnson resigned. They placed
2 General -- Colonel Bates at the time, who was the one who
3 conducted the investigation into the position vacated by General
4 Johnson, and I was told to promote that individual.

5 Now, I was also told to promote, when Johnson vacated, I
6 was also told to promote a General Hall to a general officer
7 position, which I did. I was told to promote Zuick because he
8 had made some comments in some circumstances, I don't know, that
9 he felt that he should be promoted, and if he didn't get
10 promoted, he was going to go to someplace else. And General
11 Shank is the one who advised me that I should promote him.

12 Okay, the ones that were forced out and transferred. It
13 was Shinaver [phonetic], Johnson, Aguiar -- there were six of
14 them here -- Allen, Welchell [phonetic]. Now, Welchell had a
15 separate agreement. He agreed that he would step down and step
16 aside if they'd allow him to go ahead and stay in the program
17 until a certain period of time, which they did.

18 Now, if any of these general officers refused to step
19 down or resign, they went to the Military and Veterans Code,
20 Section 210(C), and issued an order which transfers a man
21 directly into the retired list. There is no recourse for anyone.
22 There is no -- you can't go to anyone within the Department and
23 discuss what has happened or occurred to you, which I tried to
24 do.

25 Now, when they use Section 210(C) of the Military and
26 Veterans Code, if you're a full-time employee or an air
27 technician, that's a federal civil service employee, you
28

1 automatically lose your job as a federal service employee.
2 You're transferred to the retired list. There's no rule or
3 regulation that you can quote to defend yourself.

4 And I might add, it's unfortunate that this used to be a
5 safeguard, and our Air Code earlier, from our earlier testimony
6 concerning the safeguards that the Legislature had established
7 for senior military officers, or any military officer in the
8 California National Guard. There is no safeguards at all. An
9 Adjutant General appointed today can selectively look at his
10 senior staff or even his junior staff, or even someone in the
11 field, and says, "I don't want that man. Issue an order 210(C)
12 of the Military and Veterans Code," and he is through.

13 GENERAL THRASHER: May I ask a question, Mr. Chairman?

14 CHAIRMAN ROBERTI: Yes.

15 GENERAL THRASHER: I would like to ask General Hebrank
16 if he had pre-signed resignations for all his senior officers in
17 his safe upon our arrival on the scene?

18 MAJ. GEN. HEBRANK: That's true, I did.

19 (Laughter.)

20 MAJ. GEN. HEBRANK: May I comment, though?

21 CHAIRMAN ROBERTI: Let's hear the comment.

22 SENATOR ELLIS: How do you get that?

23 MAJ. GEN. HEBRANK: I -- I had, which is an established
24 precedent that was set aside or used many years ago. I never
25 exercise or used those letters of resignation against anyone.
26 That's true. It was a policy that had been established for many
27 years, and I just continued on with that policy.
28

1 SENATOR ELLIS: Are you saying that when you join the
2 Air Force, that you sign a letter of resignation, and your boss
3 holds it, and holds that over your head forever until you leave?

4 MAJ. GEN. HEBRANK: Within the senior positions of the
5 California Air National Guard, also in the Army National Guard,
6 the only way at that time for removal was the resignation from an
7 individual. So -- wait a minute -- Section 210(C) was not
8 exercised against anyone at that time, had never been, but --

9 SENATOR ELLIS: But seriously, if a person came in, you
10 would have him get a letter of resignation when they walked in
11 the door?

12 MAJ. GEN. HEBRANK: Oh, no, not in all cases.

13 SENATOR ELLIS: When did you get it?

14 MAJ. GEN. HEBRANK: No, only in certain key senior
15 positions.

16 SENATOR ELLIS: When did you get it from certain key
17 senior positions?

18 MAJ. GEN. HEBRANK: If you were a commander of certain
19 units, commanders -- primarily commanders, five basic commanders.

20 SENATOR ELLIS: Good heavens.

21 MAJ. GEN. HEBRANK: Now, in nine years' time I never
22 used any of those letters of resignations against anyone.

23 SENATOR ELLIS: But the fact you had them. I'm glad I
24 was in the Navy.

25 (Laughter.)

26 GENERAL THRASHER: I would like to correct one comment
27 on the 210(C) issue concerning General Russ Allen.
28

1 That action was asked for by General Hebrank.

2 MAJ. GEN. HEBRANK: No, it wasn't, because I had an
3 agreement with him to leave in February of 1984. General Shank
4 called him up in Sacramento and abrogated that agreement. I went
5 ahead and I stepped aside, as far as his command, and the command
6 of the 146th concerning that individual was out of my hands.

7 CHAIRMAN ROBERTI: I think in order to expedite this, we
8 won't be able to continue with the dialogue.

9 General Thrasher, please keep notes. We might be asking
10 you some questions anyway.

11 Any other questions?

12 Thank you, General Hebrank.

13 SENATOR MELLO: May I ask a question.

14 CHAIRMAN ROBERTI: Yes, Senator Mello.

15 SENATOR MELLO: I have to leave right now, and it
16 doesn't appear that we're even getting anywhere near in the
17 testimony.

18 Does the Chair plan to put this over to some later date?

19 CHAIRMAN ROBERTI: Well, we'd be putting both this and
20 General Shank over.

21 SENATOR CRAVEN: May I ask a question?

22 CHAIRMAN ROBERTI: Yes, we still have to ask question
23 regarding Ms. Jordan's testimony, which is very important, and we
24 have to address that.

25 Senator Craven.

26 SENATOR CRAVEN: General, I just want to ask, the
27 Adjutant General has within his purview an authority to recommend
28 and/or promote individuals within the Guard; is that correct?

1 MAJ. GEN. HEBRANK: Yes, that's true.

2 SENATOR CRAVEN: I see.

3 So in other words, what was done as to the indication
4 that we'd like A, B, and C promoted, there was nothing illegal or
5 irregular about that?

6 MAJ. GEN. HEBRANK: No, not at all, not unless he --
7 it's only -- it's appropriate for the Adjutant General to confer
8 with the senior Army or the Air Guard Commander what his wishes
9 and desires are, and who he thinks is the most qualified and most
10 capable. That was not exercised.

11 SENATOR CRAVEN: I would not disagree with you. When
12 you say that it could be appropriate, I would think it would be
13 appropriate, although it is not required.

14 Am I correct there?

15 MAJ. GEN. HEBRANK: That's true.

16 SENATOR CRAVEN: Thank you, sir.

17 CHAIRMAN ROBERTI: Thank you, General Hebrank.

18 General Jerome Shinaver.

19 General Shinaver, before we get to your testimony, we'll
20 break for ten minutes.

21 (Thereupon a brief recess was taken.)

22 CHAIRMAN ROBERTI: What we're going to do is take the
23 testimony of General Jerome Shinaver, and I want to review the
24 transcripts of both this hearing and General Shank's hearing.
25 And we will then put them both over until the 16th, and that will
26 be the last day of conclusion.

27
28

1 I want to read the transcripts, because I think we all
2 want to ask questions. We do not want to ignore the very
3 important testimony Ms. Jordan made, but I do think we want to
4 review her testimony before we ask any questions so we're
5 pertinent.

6 We don't want to prejudice either General Thrasher or, I
7 think it was last week, General Shank; however, we want a review
8 ourselves of the questions. It becomes a little complex to
9 unsort this.

10 So, after we sort out the transcripts, we will be able
11 to review the question more pertinently, so for the record, the
12 hearing will be the 16th of this month, and we will hear it at
13 the same time we'll hear General Shank's appointment. That'll
14 give us a chance to read the transcripts so that we can review
15 the testimony of some of the witnesses, including Ms. Jordan.

16 We will hear now from General Shinaver, and after
17 General Shinaver's testimony, we will conclude. General Thrasher
18 will be given a chance to rebut, but we would hope you would do
19 that on the 16th, if you keep your notes, and then we will do the
20 same with General Shank.

21 That the two hearings are very much interrelated, and so
22 I think it would be appropriate that we take them both up on the
23 same day.

24 General Shinaver.

25 BRIG. GEN. SHINAVER: Mr. Chairman, Members of the
26 Committee, I'm Brigadier General Jerome Shinaver. I'm now
27 retired. I reside in Fresno, and I served in the Army National
28 Guard for over 33 years.

1 And you want to talk about a program to follow, this is
2 a program to follow all right.

3 Before I continue, I would like to make one statement on
4 some of the testimony that has come forth.

5 There was a mention of a "good ol' boy" syndrome that
6 had been created in the Guard, and I'll allude to that a little
7 bit later, but in fact, there was a pattern of protecting
8 officers that had -- they were politically, I'll say, astute, had
9 connections and so forth. And I think I can give you an example
10 of that as we progress here. But this was not uncommon in the
11 Guard. I thought it was pretty much common to the Army Guard,
12 but I can see it certainly wasn't.

13 I enlisted in the Guard in -- as a Private. I kept my
14 nose clean. I diligently pursued and complete all my training
15 and educational and technical requirements, and I ultimately rose
16 to the grade of Brigadier General, and I was assigned as
17 Assistant Division Commander of the 40th Division.

18 That took a long period of time, gentlemen, and
19 certainly not by way of having assistance anywhere. In fact, at
20 one time I was dearly at odds with the Adjutant General several
21 years ago, not either one of these two gentlemen. And so, my
22 achieving the grade of Brigadier General certainly was not
23 because there was any favors being done to anybody, or that I was
24 well liked above.

25 During my service, I accumulated over 20 years of
26 command time alone. I was one of the very few Generals in this
27 State to be promoted generally to General of the Line, and not
28

1 Adjutant General as is sometimes the case in the State. I think
2 that gives me some qualification to judge character, and I've
3 judged the character of many individuals in my time. I think
4 that gives me the ability to judge character.

5 I'd like to state here today that I do not believe that
6 Mr. Thrasher is worthy of being assigned as the Adjutant General
7 of the State of California.

8 I have a resume here outlining his background. In his
9 own record, he reflects only one year of command time, which
10 again was brought up earlier. All other assignments were
11 administrative.

12 The significance here is that if successful today, or
13 later on the 16th, he will become in every respect a Commander of
14 the California National Guard, Commander of over 26,000 men and
15 women.

16 But let's just for one instance take the tact that
17 Senator Ellis took, and state that, well, he won't be the
18 commander of it, and he won't be responsible.

19 Well, then, by the same token, all the accolades that
20 have been presented here up to this time by those in favor of Mr.
21 Thrasher, then those accolades certainly don't belong to him
22 either; they belong to the men and women and the subordinate
23 commanders that did all the work.

24 I really am looking at here, and I'm really concerned.
25 I am concerned about the Guard. I've spent a lot of time, I've
26 spent a good deal of my life in the Guard. I don't like to see
27 the Guard degenerate to some sort of "good ol' boy" organization,
28

1 and riddled with cronyism, and stuff like that. And I look at
2 Mr. Thrasher here and I say, "Is this the best the State of
3 California has to offer to the people?" And I certainly hope
4 not.

5 The nature of appointing the AG does not in itself
6 assure the best selection of leaders. So in my time, I've seen
7 some good AGs and I've seen some bad, but I must tell you mostly
8 I've seen mediocrity. But this is the worst yet. I'm really
9 concerned about this.

10 I do not believe Mr. -- I do not believe that Mr.
11 Thrasher has the integrity, and I believe he lacks the moral
12 fiber to make the necessary decisions and withstand the pressures
13 that are put on that office, not only politically but
14 administratively, and monetarily, and everything else. I do not
15 feel that he's up to this.

16 My experience with him has indicated that he makes
17 decisions concerning people's lives and career based on
18 incomplete information. I feel that he is totally concerned with
19 furthering his own career or position, even though it may be at
20 the expense of others.

21 I feel that he's a product of this "good ol' boy" system
22 that I've mentioned, that has operated in California for all too
23 long, and I really would like to see this system stopped. And I
24 really would ask you gentlemen to help somehow or another atop
25 this thing at this time and let's start getting some people that
26 are quality people in here, and people that can lead the Military
27 section of this State.
28

1 I'd like to cite several instances that will clearly, I
2 hope clearly, give you an insight to Mr. Thrasher's character.

3 My first experience with Mr. Thrasher goes way back,
4 approximately ten years ago. I was commanding the 3rd Brigade of
5 the 40th Infantry Division, mechanized at that time. Things were
6 going quite well for the Brigade. It was at the time the
7 biggest, and naturally it had to be the best in the State.

8 And all of a sudden, we started getting a little -- a
9 bunch of minor problems. We were being requested by State
10 Headquarters to come down and look at our supply procedures; to
11 come down and look at our unit funds, and look at our training
12 procedures, and everything else. So, not necessarily irregular,
13 but certainly something that had been irregular because it had
14 never been done before, but it certainly was their prerogative.

15 And we got a visit from Mr. Thrasher. I was told back
16 then -- I didn't know him at that time very well. I knew of him,
17 but I didn't know him very well. At that time, I was told that
18 he had come on board that day. We were in the field, and he'd
19 come on board that day just to observe our training operations.

20 Well, I didn't have too much time to spend with him, and
21 my Executive Officer took him about the place and showed him
22 everything. It seemed like after that, we really started getting
23 a rash of requests for looking into this, and looking into that.

24 My staff advised me at that time that we've got a
25 problem, and I said, "Well, yeah, obviously we have, but you
26 know, things don't always run smoothly." They said, "No, no,
27 we've got an internal problem." "What's that internal problem?"
28

1 They indicated, "Well, got -- the XO's meeting with," the best
2 information they had at the time, the XO, my Executive Officer,
3 was meeting with Mr. Thrasher. I said, "Well, so, what's the big
4 deal about that?" I said, "I really don't appreciate that."

5 You know, obviously you gentlemen can appreciate that,
6 that you don't like your subordinates dealing with higher
7 headquarters without your knowledge.

8 As it turned out in our investigation, we found out that
9 my Executive Officer was indeed meeting with Mr. Thrasher. And
10 although we could never really put our thumb on it, many of the
11 things that had come about could have only been passed on to that
12 Headquarters through Mr. Thrasher, through my XO.

13 I confronted my XO at the time and asked him, "What is
14 going on?" And I must tell you, I guess I broke the law at that
15 time, according to all the testimony. After he told me, I
16 certainly threatened his body and indicated that he shouldn't do
17 that again.

18 After that session, everything stopped. We no longer
19 had any of these minor problems. We no longer had any requests
20 to investigate this or look into that, or anything else,
21 personnel complaints particularly, and it all stopped.

22 At this time, I feel that indeed Mr. Thrasher was one of
23 the persons that passed on that information. Not illegal, or not
24 improper, but certainly not above board. If there were problems,
25 it certainly should have come to the commander.

26 CHAIRMAN ROBERTI: Senator Craven.
27
28

1 SENATOR CRAVEN: Were you familiar with your Executive
2 Officer at the time?

3 BRIG. GEN. SHINAVER: Yes, in what manner, sir? He was
4 my Executive Officer for some time.

5 SENATOR CRAVEN: Well, you were Brigade Commander.

6 BRIG. GEN. SHINAVER: Yes, sir.

7 SENATOR CRAVEN: And he was what, a Colonel or you were
8 a Colonel?

9 BRIG. GEN. SHINAVER: I was a full Colonel; the
10 Executive Officer was a Lieutenant Colonel.

11 SENATOR CRAVEN: Did you have normal conversations with
12 him in the normal course of the routine of running the Brigade?

13 BRIG. GEN. SHINAVER: Oh, yes.

14 SENATOR CRAVEN: Did he not tell you that he had met
15 with General Thrasher?

16 BRIG. GEN. SHINAVER: No, no, sir.

17 SENATOR CRAVEN: He never said that?

18 BRIG. GEN. SHINAVER: No, sir. And in fact, on the
19 initial confrontation he had denied that he had been going to
20 State Headquarters and talking to anybody.

21 We proceeded to look further, and you know, sir, you've
22 mentioned that you've been in the service before.

23 SENATOR CRAVEN: A little.

24 BRIG. GEN. SHINAVER: You know the system is far from
25 secure. It doesn't take very much to get information.

26 We inquired from folks at Headquarters whether my XO had
27 been up there on any occasions, and we were told yes, he had
28 numerous times and had met with --

1 SENATOR CRAVEN: General, let me ask you this.

2 I get the impression, unfortunately, that there are a
3 hell of a lot of people that don't like a hell of a lot of other
4 people in the Guard.

5 (Laughter.)

6 CHAIRMAN ROBERTI: That's the one thing, I think, that
7 is a given.

8 BRIG. GEN. SHINAVER: Yeah, that's a good --

9 SENATOR CRAVEN: And I must confess to you, I never
10 served in the Guard, and I'm not familiar with that system.

11 But the thought occurs to me that perhaps your Executive
12 Officer was not particularly fond of the Brigade Commander.

13 BRIG. GEN. SHINAVER: Oh, quite so. That occurred to
14 me.

15 SENATOR CRAVEN: In other words, presumably he wanted to
16 speak to another authority.

17 Was the General at that time senior -- yes, he was, I
18 guess. Was he a general officer at that time?

19 BRIG. GEN. SHINAVER: No, sir.

20 SENATOR CRAVEN: He was a Colonel?

21 BRIG. GEN. SHINAVER: He was a Colonel, and he was not
22 senior to me at that time either.

23 SENATOR CRAVEN: That's another thing I don't quite
24 understand about the Guard, too. You have senior commanders in
25 the field to the Adjutant General.

26 However, did you speak to the Executive Officer about
27 it? How did you find out about that, General?

1 BRIG. GEN. SHINAVER: Well, I found out it by way --
2 found out about it by way of my staff. I said -- one of the
3 cases when we started having these series of requests to look
4 into the operations of the Brigade, I said, "Tell" -- I said,
5 "Certainly State Headquarters can come down here and look at us
6 any time they want."

7 SENATOR CRAVEN: Yes.

8 BRIG. GEN. SHINAVER: But by rights they should go
9 through the chain of command, go through the division, come back
10 down here, and if there's problems, we'll certainly open the
11 doors.

12 SENATOR CRAVEN: So the Executive Officer, whatever he
13 may have said, he did on his own without any knowledge of his
14 commander?

15 BRIG. GEN. SHINAVER: Yes.

16 SENATOR CRAVEN: Very well.

17 CHAIRMAN ROBERTI: General Thrasher.

18 GENERAL THRASHER: May I ask a question?

19 If it was ten years ago I would, number one, like to
20 know what capacity I was in.

21 And number two, I'd like to know who I talked to about
22 what?

23 BRIG. GEN. SHINAVER: I believe at that time you were
24 assigned as the IG, and I don't remember whether it was the
25 Assistant IG or whether you were the State IG at that time.

26 GENERAL THRASHER: And are you implying that I was there
27 in an Inspector General capacity?
28

1 BRIG. GEN. SHINAVER: I don't know.

2 GENERAL THRASHER: I have never visited the 3rd Brigade
3 in an Inspector General capacity.

4 BRIG. GEN. SHINAVER: I don't know. I indicated that,
5 that I didn't know why you were there. I indicated the purported
6 reason that you were there was to observe our training. That's
7 what I was told. I didn't question it.

8 SENATOR CRAVEN: Well, let me just -- I don't know if
9 this holds true with your organization in the best, but I've
10 served on Inspector General teams as a junior to the senior
11 Inspector General. And we used to talk to all kinds of people,
12 not in the presence of the commanding officer, and that we did
13 not think to be unusual.

14 BRIG. GEN. SHINAVER: No. Well, it's not entirely
15 unusual, but certainly if you're there for the purpose of
16 investigating something, or that the IG is concerned, normally
17 the IG never shows up at your unit unless there's a problem.

18 SENATOR CRAVEN: Unless it's routine; right, I
19 understand.

20 BRIG. GEN. SHINAVER: Yeah.

21 And there's really no problem with the IG showing up
22 just to talk to the troops and stuff like that.

23 But if the IG is there for the purpose of gathering
24 information or something, there's something going on, certainly
25 he owes it to that commander, in fact it's required by regs that
26 that commander be notified that there an investigation going on.

SENATOR CRAVEN: General, at the risk of getting a wrong answer, I'm going to ask you a question.

Did your Executive Officer ever make general officer?

BRIG. GEN. SHINAVER: Oh, yes.

SENATOR CRAVEN: Did he?

BRIG. GEN. SHINAVER: Oh, yes, he did.

SENATOR CRAVEN: Is he still in the --

BRIG. GEN. SHINAVER: Yes, he is, sir.

SENATOR CRAVEN: -- Reserve?

BRIG. GEN. SHINAVER: To my knowledge he is. In fact, he's got my job now.

(Laughter.)

SENATOR CRAVEN: Oh, well, that's what I had in mind. I thought maybe that happened.

BRIG. GEN. SHINAVER: Well, you might say, "Oh, so he's trying to get even here." But no, there's no -- I think if you'll look at my record, gentlemen, there's never been anything on my record that has ever indicated that I'd ever step out to get even with anybody, and I'm certainly not doing that now.

I have a sincere concern for the Guard, and the implication here is certainly not that Mr. Thrasher did anything wrong. All that I'm trying to do is portray a characteristic here, sir.

SENATOR CRAVEN: Which succinctly is stated as --

BRIG. GEN. SHINAVER: Which I have indicated that he lacks the integrity or the honesty to be the Adjutant General.

27

28

(Laughter.)

1 SENATOR CRAVEN: That's a very indicting statement --

2 BRIG. GEN. SHINAVER: Yes.

3 SENATOR CRAVEN: -- albeit short, but very indicting.

4 BRIG. GEN. SHINAVER: Uh-huh.

5 If I may proceed --

6 SENATOR CRAVEN: You may.

7 BRIG. GEN. SHINAVER: -- perhaps some of it will come
8 out. It's certainly for you to judge, sir.

9 SENATOR CRAVEN: Fine, very good.

10 BRIG. GEN. SHINAVER: During my assignment as the
11 Assistant Division Commander for the Division, there was also
12 another general officer assigned at that time, and everything was
13 going pretty good for the Division.

14 And I noted one day, however, that the other General had
15 showed up with a car. And I says, "Boy, where did you get that
16 car?" A military car, it was a military vehicle. A civilian
17 type with the proper military colors.

18 And the -- and I noted that it showed up for the drills.
19 Our headquarter's in Los Alamitos. My home was in Fresno. It
20 was obviously a long drive. You're required by regulations to
21 drive back and forth to drill, or get to and from drill on your
22 own time, and at your own expense, and your own vehicle. You're
23 not authorized to travel in government vehicles.

24 I noted that this vehicle sort of regularly showed up at
25 the Division Headquarters and disappeared. I asked the other
26 Assistant Division Commander at that time where he'd gotten this
27
28

1 car, and how the heck did you get it, and what's going on? And
2 we were short of vehicles, so there wasn't many vehicles to drive
3 around anyway.

4 And I said, "You know, really how did you get this
5 thing? If think if you're going to have one, we all ought to
6 have one." And, "How come you're using this to drive back and
7 forth?" That was my question.

8 And he indicated that, well, he wasn't driving it back
9 and forth. And I said, "Well, how's it getting back and forth?
10 I know it's going back and forth. Where was the car from?" He
11 said, "The car's from State Headquarters." I said, "Well, how
12 did you get this thing?" He says, "I just went up there and got
13 it." I said, "Well, let me in on this great secret, because I
14 sure would like to have it."

15 The story that was related to me by him was that, "Well,
16 if you want a car, go up and see Thrasher. He'll take care of
17 it." I said, "Well, that's not right to drive this car back and
18 forth to drill if that's what you're doing." He says, "That's
19 not what I'm doing." I said, "Well, doggone it, the car comes
20 back and forth every drill, and you're here, and I don't see your
21 private car. So I don't really don't know how you're getting
22 here, and the car's getting here, and you're not riding it."

23 Well, I did see him ride it on several occasions. I
24 believe that he was driving that car back and forth to drill
25 against regulations, and I believe that Mr. Thrasher knew of it
26 since he told me that he had, and all I had to do was talk to Mr.
27 Thrasher and get a car similarly, okay.
28

1 In the course -- now, we're getting down to the end,
2 gentlemen. In the course of my service, there was at one time a
3 program purported that was going to be put into effect. And this
4 program was supposedly to ensure career progression of senior
5 officers. The program was first presented by the Division
6 Commander at that time, and it went something like this.

7 In order to ensure career progression of Colonels to
8 Brigadier General, and Brigadier Generals basically out, we're
9 going to have a two-year program. And you'll be selected by the
10 Division Commander as to who's going to participate in this
11 program, and it's going to be every two years. That's all you're
12 going to get. And in order to ensure that you only get two
13 years, you're all going to sign resignation forms, which was
14 quite an issue here a minute ago, so that we ensure that all you
15 spend here is two years at a time and that the program can
16 progress.

17 I objected to that. I attempted to talk to the other
18 Assistant Division Commander at that time, and he said, "I think
19 it's a good program."

20 And I said, "I think you're crazy because all that's
21 going to do is turn into a bunch of musical chairs, and where
22 does it stop? And what about if we're going from Colonel to
23 Brigadier General, what about Major Generals? How come they're
24 not included in this program so that we do have, in fact, is
25 that's what you're attempting to establish, a good career
26 progression so that you have an opportunity to go all the way?"
27
28

1 "No, Major Generals are not included in this. Just that
2 two elements right there."

3 I objected strenuously to this program. Shortly after
4 that, I was told that I would be required to resign. And I said,
5 "Well, you can't make me resign. Why do I have to resign?"

6 "Well, you just have to resign. This was our
7 agreement."

8 Along about that same time, a change of command
9 occurred, and the other Assistant Division Commander became the
10 Division Commander. He called me into his office again at that
11 time and says, "Okay, I want you to sign a resignation form.
12 You're going out."

13 I says, "Wait a minute. I don't know anything about
14 going out, and I refuse to sign a resignation form. And what's
15 happening here? Why are you singling me out?"

16 "I'm not singling you out. You're the first that's
17 going to go on this two-year rotation program, and so you've
18 already had your two years, so you're going out."

19 So I said, "Well, I really am not going to go along with
20 that," and I said, "further, I never agreed with that program in
21 the first place. And I resent the fact that for no reason
22 whatsoever, you're attempting to force me out."

23 I attempted at that time to have an audience with the
24 State Headquarters, namely General Shank. I was unsuccessful in
25 my initial contacts with the State Headquarters, and shortly
26 thereafter, after those first attempts at contact, I had word
27 that Mr. Shank was coming to Fresno to address a meeting of some
28

1 club, or something. I don't recall what it was; it's really
2 unimportant.

3 And I called and got ahold of Mr. Thrasher [sic] and
4 said, "Can I have a meeting with you?" And he said, "Yes, you
5 can." And I met him at the hotel where he was speaking.

6 And I laid out this program of progression, and I
7 indicated to him, "Do you realize what this is going to do to the
8 Guard?" I said, "You spend all this time and money to train an
9 officer. He finally becomes a general officer. You've spent
10 thousands and thousands and thousands of dollars on him, and now
11 you're going to use him for two years." I said, "One, it's a
12 waste of money, and second, you're going to just develop
13 mediocrity because you're going to fire these people through
14 these chairs so fast that you can't develop any expertise."

15 And I indicated to him, I says, "In fact, that's going
16 to affect you." I said, "How do you feel about that?" And I
17 also asked him, "And what I don't understand, it seems like I'm
18 the only one being affected now with this program."

19 He told me at that time he didn't know anything about
20 it. He would check into it. He would get back to me, and he he
21 would assist me.

22 And I said, "Fine, that's all I want. All I want to
23 know is to find out what's going on, what's happening, and why am
24 I being riffed out like this?"

25 I never received any contact. He never got back to me.
26 I made an effort to call and couldn't even get past the
27 secretaries. I never made contact with him.
28

1 Finally I did, in fact, make contact with State
2 Headquarters, and did arrange a meeting with General Shank to
3 discuss the reasons and everything else. I went up to the State
4 Headquarters, and I told General Shank the whole story. And I
5 said -- I outlined this story, the two-year progression program,
6 and I said, "Why is this being done at this time?"

7 He said, "Well, I was told by the officers concerned
8 that everybody agreed to it." I said, "That's foolish. Why
9 would anybody agree -- why would anybody, to start with, agree to
10 such a ridiculous program?" And I tried to point out to him what
11 I felt it would do to the Guard; how it would degenerate into
12 musical chairs; and how it would lower the capability of a
13 Brigade, commanders and general officers.

14 And I asked for him to hold the program in abeyance,
15 including my -- including the issue of me being forced to resign,
16 and investigate it to find out what the effect of this program
17 would have on the Guard.

18 And during the course of the -- and he said he didn't
19 need to. That he had full faith in his commander.

20 And I said, "Well, as a matter of fact, how did you
21 select that commander that you picked out there?" I said, "I
22 don't ever recall being interviewed for the position, or anything
23 else like that." And I says, "I have as much qualification, if
24 not more, than the officer you promoted. So -- and I don't
25 recall any board being established to review general officer
26 promotions."

27
28

1 And Mr. Shank told me at that time, "I don't have to.
2 He was my friend. I know him. I don't you, so therefore he got
3 promoted."

4 I said, "Well, this certainly is a fine board and a fine
5 way to promote people. You really don't care what the quality of
6 the Guard is going to turn out to be."

7 And obviously -- and I indicated to him that obviously
8 he didn't care -- oh, let me back up, gentlemen. I missed one
9 key point in all this meeting.

10 General Thrasher was also present, sitting on the couch,
11 during this whole discussion.

12 After it was pretty well clear to me that Mr. Shank was
13 not even going to bother talking to me about the situation, and
14 that we were fighting a losing battle, and after I told him that
15 it was not true, that I did not agree to this, he said that all
16 the officers agreed to it.

17 I said, "That's not true. I did not agree to it."

18 He says, "Yes, you did."

19 I said, "No, I didn't."

20 He says, "Well, the other two Generals told me you did."

21 I said -- well, in plain words, gentlemen, I said, "He's
22 a -- they're liars, and if you want to bring them forward, let's
23 sit here together in a conference, and I'll point out exactly
24 what my opposition was," and I said, "there's at least of them,
25 the current Division Commander, that I did express that
26 opposition to, and now he's the Commander, and he's implementing
27 this program, and I told him I never agreed with it in the first
28 place." I said, "So they've lied to you."

1 He allowed how one of them had lied to him, but the
2 other one hadn't told him the whole truth.

3 I said, "Well, what's the difference?"

4 He says, "Well, quite a bit," in his mind.

5 I said, "I don't see any difference." But I said, "If
6 that's the way that you're going to make your decisions, I guess
7 certainly I don't want to serve an outfit like this."

8 The final statement I made, which really devastated me,
9 was, I said, "Well, you know what you've done to me." I've
10 served in the Guard for all these years. I finally have got to a
11 position where I can make a difference in the Guard. And my
12 philosophies, and my training, and my background, and I was
13 considered one of the very -- well, if I can be a little bit
14 egotistical here, I was considered one of the very best infantry
15 officers and the very best at infantry tactics and recognized
16 tactics in the Division at that time, and was told so, and have
17 evaluations stating so.

18 So, you know, I said, "Why are you getting rid of me at
19 this time?"

20 I never did get a final answer. All I know, and all I
21 was ever told was that I was going, and that was it. Didn't make
22 any difference.

23 I said, "Well, you're just ruining a long career here."

24 At that time Mr. Thrasher spoke up, and he says, "What
25 about my career? If somebody doesn't go, my career is
26 jeopardized."

27
28

1 I turned to Mr. Thrasher at that time. I said, "Then
2 you knew about this whole program. And when I talked to you that
3 night in the motel and poured my heart out to you, and asked you
4 to help me and give me information as to why is this program
5 going on, what is happening here, you knew the whole story. And
6 now you're telling me now, since you're sitting here you
7 obviously know, you haven't said one word. You must have known.
8 You must have agreed to this program. And now you're telling me
9 if this program isn't instituted, that your career is in
10 jeopardy."

11 I indicated to him, in plain words I said, "You deceived
12 me, then, didn't you? You lied to me, because you did know
13 about the program."

14 No answer.

15 At that time, gentlemen, I got up and walked out.
16 Shortly thereafter, I was given orders or notice that I was
17 transferred to the Reserve, and that ended it.

18 And that also ends my presentation, but I would like to
19 ask the Committee that even though this is obviously presented in
20 some form of -- you may see some indication of retribution here,
21 I think you people know that you can't go through this type of
22 stuff without feeling some animosity to the people that did it to
23 you, certainly so.

24 But in all honesty, I'm here. I don't think this should
25 happen to the National Guard. I don't think officers should be
26 treated in this manner. I don't think enlisted personnel should
27 be treated in this manner. It permeates the whole system.
28

1 And I think and I really hope that this Committee would
2 exercise its authority, or whatever you have here, and I would
3 really encourage and ask that you not recommend the appointment
4 of this officer.

5 Thank you.

6 SENATOR CRAVEN: General, may I ask a question?

7 CHAIRMAN ROBERTI: Yes, Senator Craven.

8 SENATOR CRAVEN: General, when you were in the two-year
9 program, which you didn't particularly care for, but presumably
10 at the end of that two years they said, "That's it."

11 How was your age in grade at that time?

12 BRIG. GEN. SHINAVER: I was -- okay, I was 52, I
13 believe.

14 SENATOR CRAVEN: So that was not a problem?

15 BRIG. GEN. SHINAVER: No, age and -- no, by regulation,
16 I could complete, in fact, I could complete through the grade of
17 Major General by regulation. I had plenty of time. That was not
18 the issue.

19 SENATOR CRAVEN: How much service did you have in toto?

20 BRIG. GEN. SHINAVER: At that time in toto?

21 SENATOR CRAVEN: No, no, I mean today. You're retired
22 as a --

23 BRIG. GEN. SHINAVER: Thirty-three years, sir.

24 SENATOR CRAVEN: Thirty-three, Brigadier.

25 BRIG. GEN. SHINAVER: Oh, not as Brigadier.

26 SENATOR CRAVEN: No, but you have 33 years, and you
27 retired as a Brigadier General.
28

1 BRIG. GEN. SHINAVER: Yes, that's correct.

2 SENATOR CRAVEN: Very good, thank you.

3 CHAIRMAN ROBERTI: Thank you very much, General
4 Shinaver.

5 I understand General McMarty has come from Washington,
6 D.C., and I think we should take the General's testimony now.

7 After General McMarty concludes, we will recess, or
8 rather we will adjourn, and we will reconvene the hearing on the
9 16th of March.

10 SENATOR CRAVEN: Mr. Chairman, the General's name is
11 with an "e", McMerty.

12 CHAIRMAN ROBERTI: McMerty, excuse me.

13 Brigadier General John McMerty, Deputy Director of the
14 Air National Guard.

15 BRIG. GEN. McMERTY: Thank you, Mr. Chairman, and I
16 welcome the opportunity to appear before the Committee, and it's
17 my hope that I might be helpful to you in your deliberations.

18 But before I do that, I've just got to comment on one
19 thing that came up during the hearing that touched me and
20 bothered me a great deal. And that's the feeling expressed by
21 Mrs. Jordan, that she's been treated as a second-class citizen
22 since the accident occurred.

23 None of us who fly like to think that the system is so
24 inhumane and unresponsive as to make our ladies feel that way.
25 And none of us would like to feel that our own wife would be so
26 treated.

1 So I want to just publicly apologize to her, and I
2 recognize that that doesn't offer her much solace, but I'd like
3 to at least have that on the record.

4 Senator Greene, in my view, came in and kind of
5 established the framework for a couple of issues that I am
6 competent to address to this group. And he basically raised the
7 issue of who's in charge.

8 And clearly, in the issues that are being raised before
9 this Committee, that's a terribly important point, and I'd like
10 to speak to two of them very specifically.

11 One, when it comes to accident investigations, the
12 convening authority for accident investigations is the Gaining
13 Command of the unit in question. So the Gaining Command that
14 convened the accident investigation board for the Fresno accident
15 is the Commander of Tactical Air Command.

16 And he, in turn, processes the proceedings of that board
17 through the Inspector General of the United States Air Force.
18 And the entire process is rather elaborate. It's covered by
19 regulations, and it's been challenged in court on numerous
20 occasions.

21 But the fact of the matter is, we have -- up to this
22 point the process has been sustained.

23 And the point, I think, that's important for this
24 Committee is that the Adjutant General of California, or for that
25 matter any State in this nation, has absolutely no authority to
26 release information from those reports, and we aren't going to
27 give it to them.
28

1 So, I just wanted to make sure we made that point clear
2 for the Committee.

3 The second point that I would like to address is the
4 question of the leadership, management, and the capability of the
5 144th Fighter Interceptor Wing, because that's been called into
6 question.

7 I will tell this Committee that is the most inspected
8 Unit in the entire Air National Guard because some of the things
9 that you've heard going on in this room today have been going on
10 in my office, and the office of other people in the Pentagon, for
11 a good long time.

12 We have gone out and looked as hard as we can, as many
13 ways as we can, to determine whether or not that Unit is a good
14 Unit or not.

15 I will tell this Committee that I'm beholden to no one
16 in California. The people who work for me are not beholden to
17 anyone in California. And the people who come here from the
18 United States Air Force are not terribly interested in what the
19 Adjutant General of California thinks about their inspection
20 procedures. We go about our business because we're charged with
21 the responsibility to ensure that our units are capable as
22 they're supposed to be, because our nation might need for them to
23 be so. And we take that very seriously.

24 Now, there was reference made to a report that was done
25 in August of 1986. The General in charge of that report was
26 Major General Glenn Osgood. That report came back into the
27 Pentagon. I signed that report out from the National Guard
28

1 Bureau, and we gave the Unit a clean bill of health, because that
2 is, in fact, what I believed they deserved. I believed it then;
3 I believe it now.

4 Subsequent to that, the United States Air Force
5 inspection teams came in and looked at almost the same areas,
6 because it was time for them to do that, and the two things were
7 done independent of each other.

8 During the inspection by the 1st Air Force, the Unit
9 received an "excellent" rating. And I would request that the
10 history of the 144th inspection over the last few years be
11 submitted to this board for your consideration. I think you'll
12 observe that the last thing we did was ignore the issue.

13 I think the point that's important for this Committee is
14 that we and the others who spoke to those issue were competent
15 authority. We gave the Unit a clean bill of health, and the
16 Adjutant General had every reason to rely on us.

17 Now, if someone has a question about how we do business,
18 that's fair. I'll defend myself and our system as best I can.

19 But as the Senator said, I don't believe there's a
20 system in being today that's without blemish, and I don't claim
21 to be one that's without blemish. And we've got all the human
22 problems of anybody else. We just give it our best shot.

23 Now, since I won't be here in the event of some
24 subsequent testimony, I'd like to comment on a point raised by
25 Brigadier General Ed Aguiar.

26 General Aguiar correctly stated that when the report was
27 released under the Freedom of Information Act, there was some
28

1 additional information that became available signed out by a
2 Colonel who was, up until that point, not identified. And the
3 reason that that Colonel was not identified is because the report
4 in question was a report that that Colonel wrote to me, and it
5 was intended by him to be for my eyes only.

6 The report was filed with the Osgood report. And the
7 law says that when someone requests information under the Freedom
8 of Information Act, you give them everything in the file. The
9 people in our administrative section signed that back out to the
10 State sanitized. That was the first time the State, General
11 Thrasher and his staff, saw it also.

12 Sometime later, I was informed that that had gone out,
13 and I got involved myself with the process. And the system
14 responded with unsanitized information.

15 I wanted to make that point because if somebody made an
16 error, it's us, and it might very well be that we did. But in
17 any event, General Thrasher and his staff are innocent of
18 anything related to that issue.

19 I will answer any questions you wish.

20 CHAIRMAN ROBERTI: Thank you for your testimony, General
21 McMerty.

22 Any questions? Senator Petris.

23 SENATOR PETRIS: I appreciate your comment about the
24 widow, because that's really caused us a lot of concern. And
25 there has been the appearance of a runaround, not adequate
26 consideration given, responses to many requests, and so forth.

1 And I suppose the thing that cut the most was that after
2 a couple months of this, where she was very frustrated in her
3 efforts to get information, apparently had not received
4 explanations to her satisfaction as to why she didn't have
5 information, she sees a story in the newspaper attributed to the
6 Air Force. The report was an Air Force report, indicating lack
7 of qualifications, or incomplete training, of this pilot.

8 Now, when your husband has been killed, and the guy
9 driving the vehicle is alleged to have been unqualified, or not
10 fully trained, the hurt cuts deeper. I'm sure your sensitivity
11 was displayed immediately and you can understand that.

12 So here, she sees this in the newspaper.

13 Now my question is, is there no investigation at all
14 done locally by the commander of the base about a crash of one of
15 his aircraft?

16 BRIG. GEN. McMERTY: The accident investigation and the
17 precise findings are done independent of the commander of the
18 base, and in terms of who's in charge and who is responsible for
19 the information and how the information is processed.

20 SENATOR PETRIS: Yes, I understand that.

21 BRIG. GEN. McMERTY: But we do indeed do some collateral
22 investigations that are separate from that, but we don't even
23 give that collateral investigation board the findings and
24 recommendations of the accident report. Those are kept from
25 them.

26 And it's basically a process -- I'll have to defer to
27 the attorneys -- that we do to -- in the event that we're
28 involved in litigation. And unfortunately, that's all I can say.

1 SENATOR PETRIS: Well, I'm asking this as a layman who's
2 trying to understand the process, who used to be in the Guard,
3 but never rose to the Olympian heights of General.

4 BRIG. GEN. McMERTY: There's some disadvantages.

5 (Laughter.)

6 SENATOR PETRIS: I'm a commander at the base. One of my
7 planes goes down.

8 The human impulse, it seems to me, is to ask what the
9 hell happened? Why did this thing happen?

10 BRIG. GEN. McMERTY: Yes, sir.

11 SENATOR PETRIS: And immediately do everything I can to
12 find out.

13 Now, Mrs. Jordan tells us what she subsequently found
14 out was, according to some source, the extent of the training of
15 the pilot had been exaggerated in the record over and above what
16 was true, which is a further source of anguish.

17 Is there no provision in the system for me, as the base
18 commander, regardless of the separate investigation by either the
19 Air Force or the Washington-based Headquarters of the National
20 Guard, for me as the commander to get out there and find out as
21 soon as I can what happened?

22 BRIG. GEN. McMERTY: Yes, there is.

23 SENATOR PETRIS: And go to the family and say --

24 BRIG. GEN. McMERTY: Can't go to the family.

25 SENATOR PETRIS: Can't go go the family?

26 BRIG. GEN. McMERTY: No, sir. what we do is, we provide
27 information back into our system so that we can correct the
28 problems that led to the incident.

1 SENATOR PETRIS: What is the ideal procedure? Maybe
2 there isn't any, and that's what we need to look at.

3 What is the ideal procedure, given an incident of that
4 kind in the Guard's relationship and communication with the
5 family?

6 BRIG. GEN. McMERTY: All I can comment back in that is,
7 you know, my own personal belief that we've got to be as
8 sensitive and humane and helpful as we can be. And if there's
9 constraints imposed upon us, we just have to explain those things
10 and try to make available whatever we can make available.

11 And if our process gets wrapped up in the bureaucracy,
12 and we don't do that, we don't do justice to our people.

13 But to have a wife -- ask me if I'd like to have my wife
14 treated like that is difficult for me.

15 SENATOR PETRIS: Well, that's my point.

16 BRIG. GEN. McMERTY: Yeah.

17 SENATOR PETRIS: It's one of my two points.

18 It seems there's something wrong here. Maybe the
19 approach is wrong, and the system is wrong. Maybe the system is
20 okay, but the application of the process got fouled up somewhere
21 along the line.

22 If you have suggestions on what we should be doing in
23 the future in these kinds of things to avoid the terrible grief
24 and pain, let's say the aggravated grief and pain that followed
25 after the fact, now, as a member of the family I would want to
26 know what caused it; could it have been prevented.

27
28

1 Now, that's conduct prior to the crash. But this is
2 compounded by what has aggravated her pain in the manner in which
3 she tells us she was treated after the crash.

4 So let's just stick to after the crash right now. Can
5 you tell us anything further than what you've said that might be
6 helpful to us and to the Air Guard in California?

7 BRIG. GEN. McMERTY: Well, in fairness, I can't. And
8 the reason I can't is that if they done things here in response
9 to the information that they have from the accident report, they
10 would have to speak to that themselves, and I'm not qualified to
11 comment on that.

12 And I'm not in any way, nor do I even have the
13 information to release, as far as the specifics of the accident.

14 SENATOR PETRIS: I understand that General Thrasher did
15 order an investigation by his people. And there was an
16 investigation conducted.

17 Right?

18 GEN. THRASHER: That's what he referred to as a
19 collateral investigation. Although we directed that be done, the
20 results of that become his property and unreleasable.

21 SENATOR PETRIS: Okay, that's what I'm trying to find
22 out.

23 So he does an investigation, but you get the
24 information.

25 BRIG. GEN. McMERTY: It's a little too personal.

26 It comes up into the federal system, but --

27 SENATOR PETRIS: Okay, I'll stand corrected.
28

1 It goes from the State system into the federal system.

2 BRIG. GEN. McMERTY: Yes, sir.

3 SENATOR PETRIS: In the meantime --

4 BRIG. GEN. McMERTY: The liability will be a federal
5 liability.

6 SENATOR PETRIS: In the meantime, the family's waiting
7 there.

8 Now, you know, even in a small fender-bender automobile
9 accident, there are fourteen versions of what happened if there
10 are six witnesses. We all know that. There are rumors that are
11 generated, and all these things are flying around. And the
12 family's waiting there to find out what happened, and could it
13 have been prevented, and will it be prevented in the future.
14 That's a genuine concern that any of us would have.

15 But what you're saying is, even though the General did
16 order this report, because of the law and the system, it would go
17 from his shop to the federal shop, and could not be released.

18 Now, couldn't somebody go see the family and say, "We
19 have a process here, and we're working on it. And we can't give
20 you any information until something happens from on high," I
21 suppose.

22 Along those lines, excuse the delay, we do have some
23 kind of communication here to Senator Roberti, our Chairman, from
24 General Thrasher -- it's fairly lengthy -- part of which is one
25 that accident. And there is a sentence here that says that he
26 ordered, "I", General Thrasher:

1 "... ordered the second
2 investigation, known as the aircraft
3 accident investigation, as authorized
4 by the Air Force Regulation 110-14,
5 and Air Guard Regulation ..."

6 same number.

7 "This latter investigation contains
8 sworn testimony, and the investigating
9 officer may not draw conclusions or
10 offer opinions that are not fully
11 supported by the evidence. This
12 report is releasable."

13 That's the report I'm trying to find out about. Is that
14 releasable in full, or in an edited form, or sanitized, or what?

15 See, what I'm trying to find out is, again, going back
16 to my basic question: I'm the commander. I order an
17 investigation. I want to know what happened. Now I'm confronted
18 with the family.

19 Now my understanding of your answer is, after I do all
20 that, I can't talk to the family.

21 BRIG. GEN. McMERTY: I spoke of two things: on the
22 accident report itself and the things that I did.

23 On the 110-14 that you're making reference to, I'll have
24 to defer to a legal opinion as to what part I could or couldn't
25 release. My own opinion is that --

26 SENATOR PETRIS: No, not you release, but General
27 Thrasher could release.
28

1 BRIG. GEN. McMERTY: Right, I'm just speaking in the
2 context of being in his shoes.

3 SENATOR PETRIS: Okay, thank you.

4 COL. BRODY: Sir, I'm Colonel Stuart Brody. I'm the
5 Staff Judge Advocate for the State Headquarters.

6 The 110-14 report referred to is a collateral
7 investigation, which is done sometime after the Air Force
8 conducts its aircraft accident investigation.

9 The 110-14 report is sent back to the National Guard
10 Bureau. They are the final approving authority and also the
11 releasing authority.

12 And when it was concluded, this particular one
13 concerning the June, '87 crash, a full copy of it was released to
14 Mrs. Jordan, just as soon as it had been gone through all of the
15 process back in Washington.

16 SENATOR PETRIS: Which was when?

17 COL. BRODY: Which was, I believe --

18 FROM THE AUDIENCE: This February.

19 COL. BRODY: Thank you.

20 Colonel Pyle was the officer in charge; 6 February of
21 this year.

22 SENATOR PETRIS: The 6th of February? This happened in
23 June of last year?

24 COL. BRODY: Yes, sir.

25 SENATOR PETRIS: Is that the normal time span?

26 BRIG. GEN. McMERTY: Unfortunately --
27
28

1 SENATOR PETRIS: If I were the widow, I wouldn't want to
2 wait from June to February to get some official report. Do you
3 see what I mean?

4 BRIG. GEN. McMERTY: Yes, sir.

5 SENATOR PETRIS: Is that standard procedure?

6 BRIG. GEN. McMERTY: Unfortunately. That's not the
7 first time this issue's come up.

8 I'm not proud of it. You asked me a question, and
9 that's a fact.

10 SENATOR PETRIS: Well, I appreciate your candor.

11 Okay, thank you.

12 CHAIRMAN ROBERTI: Senator Craven.

13 SENATOR CRAVEN: General McMerty, when these
14 investigations are held, are they held with any thought of
15 establishing cause and/or culpability?

16 BRIG. GEN. McMERTY: Our intent is to find out what
17 caused the accident to the extent of our ability to do so. If in
18 the course of that we find somebody culpable of something,
19 whether it's a violation of a regulation or just bad judgment,
20 then we deal with that on the basis of the findings that we --

21 SENATOR CRAVEN: Would you know that report well enough
22 to know if any culpable finding was made?

23 BRIG. GEN. McMERTY: I'm reasonably familiar with the
24 report, and it's not my opinion that there's any reason in there
25 to think that there's anybody culpable in terms of the specifics
26 of the regulatory violations or any willful misconduct.

27
28

1 SENATOR CRAVEN: And this would include the Air Arm
2 Commander as well as the Adjutant General?

3 BRIG. GEN. McMERTY: Absolutely.

4 SENATOR CRAVEN: Very well,
5 Thank you, sir.

6 CHAIRMAN ROBERTI: Senator Petris.

7 SENATOR PETRIS: Are there any exceptions to the rule on
8 the releasing of a report --

9 BRIG. GEN. McMERTY: Sir, I know of none.

10 SENATOR PETRIS: -- to the family?

11 BRIG. GEN. McMERTY: These things have gone into courts
12 of all kinds and been brought -- there's been great publicity
13 associated with some of our accidents, and some of them have been
14 covered with a lot of television and a bunch of other things
15 recently. And as far as I know --

16 SENATOR PETRIS: No exceptions?

17 BRIG. GEN. McMERTY: -- there's not.

18 SENATOR PETRIS: Let me put you through a couple of
19 hypotheticals.

20 When we read about a civilian air crash, the story
21 always raises a question: Was it mechanical error, malfunction,
22 or human error? That's the first thing people want to know.

23 So let's take a case where it's clearly established,
24 right off the bat, there's a severe mechanical failure,
25 malfunction. Nobody's fault. Maybe the ground crew, but let's
26 say nobody.

27
28

1 So there's no problem of the reputation, let's say, of
2 the pilot, or his training, or anything else.

3 That still can't be released?

4 BRIG. GEN. McMERTY: That's correct.

5 SENATOR PETRIS: Okay, now suppose Major Jordan, instead
6 of being in that airplane, was just walking along the ground at
7 the base. And this pilot, somehow or another, got into that
8 airplane and flew it, and he was dead drunk. And they found a
9 half-full bottle of booze in the cockpit. And he brings that
10 plane down and runs right over the Major.

11 Can that be released to the family? Can the family be
12 told, "Well, this guy was drunk. It's extraordinary, never
13 happened, but it happened."

14 BRIG. GEN. McMERTY: Not in the context of the formal
15 accident investigation.

16 And when you postulate something like that, I would
17 think we'd step up to it, but I can't say that in the formal
18 process we would, no, sir.

19 SENATOR PETRIS: Would you tell the family in the first
20 example that we can assure you -- we can't give you the report --
21 but we can assure you it was no fault of any human error, but a
22 bad mechanical, unavoidable malfunction. Can you tell her that
23 much if that's the case?

24 BRIG. GEN. McMERTY: Well, and I don't want to
25 equivocate on your question, but the fact of the matter is, it's
26 almost impossible for me to countenance what I might or might not
27 say if I were in the position of the people who are dealing with,
28

1 in this case, Mrs. Jordan. And I want to be careful that I
2 don't start --

3 SENATOR PETRIS: Well, I'm looking for possible
4 exceptions that either the law allows or custom.

5 BRIG. GEN. McMERTY: What I think we're talking about --
6 and I appreciate your questioning, and I think it's a good line
7 to pursue -- and that is: how far should we reasonably go to
8 meet our human responsibilities? And I can't make that judgment
9 for somebody else.

10 SENATOR PETRIS: Well, under the law, you can't --

11 BRIG. GEN. McMERTY: The specifics of the accident
12 report and the findings and the conclusions in that accident
13 report, you know, officially cannot be released.

14 SENATOR PETRIS: Okay, so here's a woman in agony. And
15 again, I remind the military people, it could be any one of your
16 own family.

17 BRIG. GEN. McMERTY: That's right.

18 SENATOR PETRIS: Wondering what happened, how and why.
19 But the Air Force and the Air Guard's sitting on information that
20 could bring her a great deal of comfort; where she at least knows
21 that it wasn't done through some terrible lack of judgment, or
22 human error of any other kind.

23 That in itself, it seems to me, would offer her
24 considerable solace, you know, as opposed to information that
25 says, "Oh, boy, we handled this thing so poorly that everybody
26 that touched this flight was way off base, and did all kinds of
27 errors, and so forth."

1 BRIG. GEN. McMERTY: At the risk of offending people in
2 the legal profession, the people that make those judgments about
3 how we do business relative to this kind of information are the
4 legal people.

5 SENATOR PETRIS: But they work with the statute, or a
6 Military Code, or whatever is in effect.

7 BRIG. GEN. McMERTY: Right.

8 SENATOR PETRIS: So as a Legislator, I'm always curious
9 about that because when we find defects, of which we have our
10 share due to our own drafting, we try to correct them, and try
11 to, you know, restructure the law in such a way as to prevent
12 these things in the future and offer a more human and humane
13 relationship with the family immediately after.

14 Thank you very much. I appreciate your coming out and
15 helping us on this.

16 BRIG. GEN. McMERTY: Thank you, sir.

17 COL. BRODY: Senator, if I might address the same
18 question, the hypothetical that you imposed to General McMerty.

19 There -- as I said before, there are two types of
20 investigations. The first one being unsworn to try to encourage
21 candor and openness of all witnesses. That would not be
22 releasable.

23 But if that subsequent collateral investigation, taking
24 sworn testimony, did determine that a pilot was drunk, and made
25 that a finding, and it was based on fact, that could be
26 releasable, yes, sir.

1 SENATOR PETRIS: You know, if it isn't releasable, how
2 do we get it under the Freedom of Information Act?

3 COL. BRODY: It is releasable under the Freedom of
4 Information Act.

5 SENATOR PETRIS: If it is releasable by them, then
6 shouldn't it be releasable by the Guard?

7 I can understand something that jeopardized national
8 security. In fact, I hope the Russians haven't been listening in
9 to these hearings.

10 (Laughter.)

11 SENATOR PETRIS: But, you know, I can understand the
12 national security as a former member of the Guard myself, and the
13 Army prior to that.

14 But it just seems to me that we ought to be able to make
15 exceptions in those hypotheticals, or at least one of them, that
16 I offered, and maybe some others that we could conceive of rather
17 easily, and I think we ought to give some thought to that.

18 Thank you.

19 CHAIRMAN ROBERTI: Senator Ellis.

20 SENATOR ELLIS: I don't like to prolong it any longer,
21 but just to give you some background on this, the aircraft
22 accident investigation scheme, prior to about the early '50s, the
23 idea of having or being involved in an accident was looked upon
24 as derogatory against the individual who was responsible. At one
25 point in time we were told that if we had an accident, we were
26 going to have to pay for it, back when we were making 75 bucks a
27 month. You know, obviously, you couldn't.

28

1 In the early '50s, the Air Force led on this and the
2 Navy followed, and they took the tact: Let's treat these
3 investigations as confidential; try to gain the confidence of the
4 people involved so that we can truly find out what happened, and
5 try to prevent it from happening again.

6 Prior to that time, Senator Craven, I think some of the
7 fellows used to lie about it. They would do something wrong,
8 make a mistake, and lie.

9 Well, if that persons knew that they were going to be
10 immune, so to speak, from punishment, then we could find out what
11 that person did, maybe teach the others what occurred, and so on.

12 So, the idea of the accident investigation and the
13 report was to be confidential for the use of the prevention of
14 accidents only, and that went to court. And as I recall, it went
15 to the Supreme Court. And they determined: Yes, you can hold
16 these confidential for that purpose.

17 Now, that's where we, the Navy, went -- we had our
18 accidents in 10,000 of hours, and I think you use 100,000. But
19 we were up around 8 or 9 accidents per 10,000 hours in the '40s
20 and the '50s, the early '50s. From that point on, the accident
21 rate started going down.

22 And I don't know what it is today, but I bet the Navy's
23 probably down to maybe 2 or 3, or even maybe not that high. A
24 very marked decrease in loss of life and decrease in loss of
25 equipment, which today is extraordinarily expensive; \$15 million
26 is common for one fighter plane now.

1 So what they did worked. And when I was there, we had
2 widows come to us and ask the same thing that Mrs. Jordan has
3 asked. And you know, you had to sympathize with them.
4 Oftentimes we would stretch it a little bit and tell them more
5 than we should. I'll admit to that. We'd tell them more than we
6 should.

7 But we couldn't divulge the entire report while we were
8 under regulation not to do it. We'd get in trouble if we did.
9 That was the hammer.

10 But it may sound brutal, but I would hesitate to guess
11 how many lives have been saved since that system went in. Prior
12 to that, you determined what the accident was based on what the
13 person wanted to tell you, not on facts.

14 So, having done that for many, many years as an accident
15 investigator, and as a commanding officer who had to call on the
16 widows, let me assure you, that's not an easy thing to do. Our
17 accidents almost always happened at night, seemed like. And
18 you'd wait up all night long, because you didn't want to go and
19 knock on the door at two in the morning.

20 And most of our Navy pilots, at least, and I'm sure Air
21 Force, their families, if they hear a knock on the door, and they
22 open the door, and there stands the commanding officer and a
23 chaplain, you don't have to say a word. They know what has
24 happened, and you go on from that point.

25 So, to people that have not been there, it might sound a
26 little bit militaristic to do that, but it has worked.

27
28

1 SENATOR PETRIS: The next time we'll get to Part One.
2 Well, you won't be here. I mentioned two parts: one's before
3 the crash, and the other's after.

4 One of the big complaints is that of repeated warnings
5 by people at various levels to take corrective action or this
6 thing would happen, and the accusation that the warnings were
7 ignored.

8 That's a different role from what you're playing.

9 BRIG. GEN. McMERTY: No, sir. I addressed that
10 directly, yes, sir.

11 In the investigation that we did in August --

12 SENATOR PETRIS: Was that covered in your --

13 BRIG. GEN. McMERTY: The Osgood report, and the October
14 of '86, and I asked for the inspection report to be submitted for
15 the record, but there were numerous inspections done. And the
16 people that did those inspections were looking to see what we
17 could determine.

18 And I just assure the Committee that we had no reason to
19 not try and find as much as we could. And I will assure you that
20 Brigadier General Thrasher is in no way able to influence the
21 general officer that commands the Tactical Air Command.

22 SENATOR PETRIS: And you were not able to verify that
23 warnings had been issued, or that --

24 BRIG. GEN. McMERTY: Sir, we were not able to
25 substantiate those claims, and we were not -- we, in fact,
26 determined that the leadership and management of the 144th was
27 excellent. And that's a matter of record.

1 SENATOR PETRIS: I've seen that.

2 Thank you.

3 CHAIRMAN ROBERTI: Thank you, General McMerty. Your
4 testimony has been very, very helpful.

5 BRIG. GEN. McMERTY: Thank you, sir.

6 CHAIRMAN ROBERTI: We will conclude this hearing, then,
7 and reconvene on the hearing regarding General Thrasher on the
8 16th.

9 (Thereupon this portion of the
10 Senate Rules Committee hearing
11 was terminated at approximately
12 6:45 P.M.)

13 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:


That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

7th

day of March, 1988.


EVELYN MIZAK
Shorthand Reporter

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28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

ROBERT C. THRASHER, Director and Adjutant General
State Military Forces

WILLARD A. SHANK, Member
Public Employment Relations Board

PAUL R. DEATS, Member
California Horse Racing Board

ROBERT L. HARVEY, Member and Chair
Unemployment Insurance Appeals Board

BRIGADIER GENERAL PAUL CARROLL

LT. COLONEL DONALD COLTON, Retired

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, we will take up the two that were our carry-overs from prior weeks, starting with Robert C. Thrasher, Director and Adjutant General of the State Military Forces.

General Thrasher, before we get more witnesses, we're going to try to contain the witnesses both in support and in opposition to, hopefully, matters that may not have come up yet.

The testimony two weeks ago by Mrs. Jordan raised a couple of points that are very important and troubling. One, during your tenure when the accident took place, her testimony indicates that the person, I would say officer because I assume that was his position, assigned to fly the plane that eventually crashed did not have proper credentials to fly that type of plane. And I'm sure Mrs. Jordan feels that that is one possible reason for the airplane crash.

My question to you is, was that the case? If so, how is it that that came about?

SENATOR CRAVEN: May I?

CHAIRMAN ROBERTI: Yes, Senator Craven.

SENATOR CRAVEN: Thank you, Mr. Chairman.

Mr. Chairman, it was with that in mind that I asked General McMerty a question dealing with culpability, which you may recall.

CHAIRMAN ROBERTI: Yes, I remember, Senator.

1 SENATOR CRAVEN: He mentioned specifically the Air
2 Officer who was in charge of the Base, presumably at least
3 administratively in charge of the pilots, as well as the
4 culpability of the Adjutant General.

5 And he said without any degree of hesitation that the
6 investigations had covered that, and in those investigations
7 there was no culpability found with either of the officers that I
8 have mentioned.

9 CHAIRMAN ROBERTI: Yes, thank you for refreshing our
10 memory of General McMerty's testimony.

11 I'm still interested, however, as to what degree General
12 Thrasher, within the specific operation of the Fresno Base,
13 participated directly, if at all, in the decisions as to who flew
14 that plane. Was that an error of someone's judgment or is it
15 normal course that that's what takes place?

16 GENERAL THRASHER: Mr. Chairman --

17 CHAIRMAN ROBERTI: And I'm glad Senator Craven refreshed
18 me as to the testimony by General McMerty.

19 GENERAL THRASHER: Mr. Chairman, to answer your specific
20 question, I am not involved directly in the decision as to who
21 flies planes on specific days.

22 If you want elaboration, we do have in the audience just
23 to address those specific questions the Commander of the 144th
24 Fighter Interceptor Wing at Fresno who was on duty that day and
25 who does make those kinds of decisions.

26 But to answer your question specifically --
27
28

1 CHAIRMAN ROBERTI: We do not know who made the actual
2 decision?

3 GENERAL THRASHER: As to who was assigned to the flight
4 and why? Yes, sir, we do.

5 CHAIRMAN ROBERTI: Who was that again?

6 GENERAL THRASHER: Well, I think on duty that day it
7 would have been the Supervisor of Flying or the Training Officer;
8 I'm not sure which. But I have Colonel Boone who was the Base
9 Commander who can probably answer it directly, if you'd like.

10 CHAIRMAN ROBERTI: If he could come up.

11 I think the matter is serious enough that I think it's
12 one we ought to address.

13 GENERAL THRASHER: Yes, sir.

14 CHAIRMAN ROBERTI: We have a duty to address it.

15 GENERAL THRASHER: Yes, sir, I agree.

16 I'm sorry, there's also Brigadier General Paul Carroll.
17 He's the Wing Commander.

18 CHAIRMAN ROBERTI: You can speak in the order that you
19 choose, and please identify yourself.

20 BRIG. GEN. CARROLL: Sir, my name is Brigadier General
21 Paul Carroll. I'm Commander of the 144th Fighter Wing.

22 I am a traditional Guardsman; that is, weekender. I was
23 in the Air Force prior to the Air National Guard since joining
24 the Guard in 1969. I spent about 9½ years in the Air Force and
25 joined the Guard in 1969 until present. I am presently the Wing
26 Commander, as I say. I previously held the Deputy Commander
27 Operations job, and then Fighter Squadron Commander prior to that
28 as a weekender.

1 The full-time Commander, the Air Commander of the Base,
2 is Colonel Alan Boone.

3 CHAIRMAN ROBERTI: We'll ask you the question, and if
4 someone else can help please jump in.

5 On the specific day in question when Major Jordan and
6 Captain Deane crashed, we understand by the testimony that the
7 pilot of the plane did not have standard credentials -- I don't
8 know the exact Air Force terms involved -- to fly the plane. But
9 I think it's somewhat undisputed that his credentials to fly were
10 not proper.

11 I am interested in who made the decision that the
12 particular pilot would make the flight? Did the person who made
13 that decision know of the inadequacies of the pilot's flight
14 ability? Did General Thrasher participate at all in that
15 decision making? And I'm trying to find out if this happening is
16 an isolated case or if it is something that, even if General
17 Thrasher didn't directly participate in it, goes to a certain
18 amount of mismanagement at the Base?

19 BRIG. GEN. CARROLL: All right, sir.

20 First of all, General Thrasher did not participate in
21 that whatsoever, nor does he, because we fly about 3500 sorties
22 per year, and probably we're talking about a three-year period
23 here which involves 10,000 sorties. So, he doesn't get into that
24 extent.

25 The decision on who flies or does not fly a particular
26 mission actually is done by the Training Department. What they
27 do is take a look at the currencies of the pilots and determine
28

1 whether or not they are or are not current for a mission to be
2 flown. They base their currencies on training sheets.

3 Training sheets are made out by pilots and backseaters
4 after they fly each mission. Those training sheets are updated.
5 The Training Officer has a list of who's current, who's not
6 current in the airplane.

7 If an individual --

8 CHAIRMAN ROBERTI: Who selects the Training Officer?

9 BRIG. GEN. CARROLL: Sir?

10 CHAIRMAN ROBERTI: Who selects the Training Officer who
11 puts these currencies together?

12 BRIG. GEN. CARROLL: He is a Flying Training Supervisor.
13 A full-time Flying Training Supervisor.

14 SENATOR CRAVEN: Who selects or appoints him as such, is
15 the question.

16 BRIG. GEN. CARROLL: Okay.

17 He is -- well, that gets into the full-time process, but
18 he's hired as a Flying Training Supervisor, appointed as a
19 Training Officer.

20 CHAIRMAN ROBERTI: By whom?

21 BRIG. GEN. CARROLL: Well, by the full-time Air
22 Commander, who has working for him a Base Operations Supervisor,
23 and this individual is responsible for a sort of day-to-day
24 process of the flying.

25 SENATOR CRAVEN: General, would I be correct in assuming
26 that that person is a full-time Guard employee, if you will, or
27 officer?
28

1 BRIG. GEN. CARROLL: Yes, sir, he is.

2 SENATOR CRAVEN: As opposed to -- he is not of the
3 Weekend Warrior type. As the General said, he is traditional as
4 it relates to the Guard; he works on the weekends.

5 But this person is there; that's his employment, if you
6 will. He's a full-time officer whose responsibility is in the
7 Three Section of the Wing, or whatever you have down there;
8 right?

9 BRIG. GEN. CARROLL: Well, it is, but I'd like to not
10 pull the weekender out and say he's not responsible. The
11 weekender is responsible. The weekender does get involved in
12 this process. He's responsible to make sure, whatever his
13 military position may be, to make sure these flying regulations
14 are followed.

15 The Training Officer is the man who is involved in
16 looking at the regulation, making sure these regulations are
17 followed.

18 And I guess we're getting to the subject here is, this
19 individual pilot was, to the Training Officer's knowledge,
20 current to fly this mission.

21 CHAIRMAN ROBERTI: So the records indicated that he was
22 current?

23 BRIG. GEN. CARROLL: The record indicated that he was
24 current; yes, sir. To the Training Officer's knowledge, this man
25 was current to fly this mission.

26 CHAIRMAN ROBERTI: Now, I think there was testimony two
27 weeks ago that he wasn't current. That is not --
28

1 BRIG. GEN. CARROLL: Well, to the Training Officer's
2 knowledge, he was current. The training sheet reflected this man
3 to be current.

4 CHAIRMAN ROBERTI: But was he?

5 BRIG. GEN. CARROLL: He in fact was not.

6 CHAIRMAN ROBERTI: How is it that the training sheet was
7 in error?

8 BRIG. GEN. CARROLL: Well, it's possible that this
9 individual pilot incorrectly marked a log sheet which showed that
10 he was current in this mission. And so when the Training --

11 CHAIRMAN ROBERTI: The pilot who actually flew the
12 plane?

13 BRIG. GEN. CARROLL: Yes, sir.

14 So when the Training Officer takes a look at the
15 training sheet --

16 CHAIRMAN ROBERTI: What was the pilot's name again?

17 BRIG. GEN. CARROLL: Captain Deane, yes, sir.

18 So when the Training Officer took a look at the sheet,
19 he in fact determined this man was current and perfectly legal to
20 fly this mission.

21 CHAIRMAN ROBERTI: Is it normal that the pilot who flies
22 the mission makes the entries of his own training?

23 BRIG. GEN. CARROLL: It had been up until shortly after
24 that point. That same system, it's called the honor system, and
25 it'd been used for years, and years, and years. Where an
26 individual aviator comes down from flying, he takes his log
27 sheet, marks it, and he puts down what he's done. The log sheet
28

1 goes back to a computer operator. They take a look at it, and
2 they make a runout sheet and --

3 CHAIRMAN ROBERTI: You said that was standard. Was that
4 the standard at all Air Bases or Fresno?

5 BRIG. GEN. CARROLL: No, sir. That standard is used
6 generally by every Base. As a matter of fact, after this
7 accident occurred, we asked that other units be called to find
8 out if in fact we really were doing something different. There
9 were eight other units called. We found out seven of them did
10 business exactly the same way we did.

11 We have changed the way we do business now, and we no
12 longer allow a pilot or a backseater to enter his training log
13 without having it reviewed again by a Supervisor of Flight before
14 it goes back into the computer section.

15 CHAIRMAN ROBERTI: And the Jordan-Deane accident is one
16 reason for this?

17 BRIG. GEN. CARROLL: Yes, sir. We probably wouldn't
18 have changed.

19 CHAIRMAN ROBERTI: Have any of the other Air Bases
20 changed?

21 BRIG. GEN. CARROLL: As I said, the ones -- we called
22 eight, and one out of the eight that we called does business the
23 way we're doing it now. The other seven are still -- the pilot
24 comes in, fills out his log, and that's it.

25 CHAIRMAN ROBERTI: So to the best of your knowledge,
26 General Thrasher did not participate in the selection --?

27 BRIG. GEN. CARROLL: No, sir. He does not --
28

1 CHAIRMAN ROBERTI: -- of Captain Deane --

2 BRIG. GEN. CARROLL: No, sir.

3 CHAIRMAN ROBERTI: -- to make the flight?

4 BRIG. GEN. CARROLL: No, those are done -- it's a
5 monthly schedule that's made out, and it's made out in close
6 coordination between a Training Officer and a Scheduling Officer.
7 They both work together to make sure that --

8 CHAIRMAN ROBERTI: Would the General have any reason to
9 review the currencies?

10 BRIG. GEN. CARROLL: No, sir. None whatsoever.

11 CHAIRMAN ROBERTI: Are there any other questions of the
12 witnesses? Senator Petris.

13 SENATOR PETRIS: I think we need some answers to some
14 allegations that have come out in the prior hearings that trouble
15 me.

16 One is predictions by officers who were critical -- some
17 were of very high rank and some were low -- of procedures, or the
18 state of training, or whatever their criticism was which resulted
19 in predictions that if that wasn't corrected, there'd be some
20 crashes there, and there were. That's one thing I think you
21 ought to comment on.

22 The second one, I know that the record also shows, as
23 indicated by one of the witnesses from Washington, that this
24 particular unit is one of the best in the country and came in
25 with very high scores in one category after another. So, that's
26 a paradox there. Maybe there's a gap somewhere. That's one area
27 I'd like you to clarify.
28

1 And the other one is -- there's three areas: one is the
2 allegations and the predictions; the other is the letter that we
3 got from one of the Generals indicating that the California Air,
4 and I guess they're specifying Fresno, had the highest accident
5 rate of any chapter of Air National Guard in the whole country.
6 I don't know how many that is. There might be two more in the
7 country, might be fifty; I don't know. I think you need to
8 clarify that.

9 And then I got a totally different version at the end of
10 the last hearing. You know, the family here is where we've been
11 oriented. There was some very moving testimony here, both from
12 the family and from the General from the Air Force who was here
13 last time.

14 But afterward, the father of the pilot came up and
15 talked to me. He doesn't want to testify, and I understand he's
16 not here today. He just said he couldn't sit through it. You
17 know, it's pretty traumatic for him, too. And he said it just
18 isn't true that his son wasn't properly qualified. He was a
19 major airline pilot for many, many years, and the father is, too.
20 It's a family thing.

21 He claims that his son was given the wrong airplane that
22 had a particular kind of tank that weighed about 4,000 pounds
23 that simply made the plane incapable of executing the particular,
24 you know, tactic that he was supposed to do. And there was a lot
25 of talk about the low flying mission.

26 I guess even we laymen understand that there's more
27 danger in certain low flying missions than when you're way up
28

1 high. But he said he never got to the low level. His thing
2 happened when he was almost 10,000 feet up.

3 So, those things, I think, since they've been brought
4 out repeatedly, we shouldn't end your part of the testimony
5 without having you comment on that. It would help clarify
6 things.

7 CHAIRMAN ROBERTI: First Senator Craven then the
8 response.

9 SENATOR CRAVEN: Yes.

10 Mr. Chairman, Senator Petris has asked some questions
11 that require, certainly, some technical expertise, which I think
12 is here amply.

13 But I think that we have gotten testimony today, as well
14 as before, which would indicate in my judgment very clearly,
15 regardless of the tragedy to which we have referred, that the
16 General who is here for confirmation had absolutely nothing to do
17 with it. There is no tie between what we are now discussing and
18 General Thrasher, unless you take the most tenuous possible
19 course to wrap him with that and say he is responsible.

20 I've served, as the rest of us have served, with
21 military organizations, and there are, unfortunately, tragic
22 accidents that take place, but I just cannot see how, with the
23 testimony that we have heard from people from Washington, and
24 with the General who has just talked here, General Carroll,
25 wherein we can tie this to General Thrasher.

26 SENATOR PETRIS: Well, I don't know that we're trying to
27 tie it to General Thrasher.
28

1 If we don't bring it up now, the family, when I spoke to
2 them, their primary appeal was, "Let's not let this happen
3 again." That's the emphasis.

4 Now, where are we going to bring it up? We can't bring
5 it up when we're reviewing the CCC Director, or the head of the
6 Department of Employment. We're bringing it up when the person
7 at least nominally responsible, the way it looks to us laymen, is
8 before us.

9 Now, I agree. I think the way the thing works, I don't
10 see how we can fault General Thrasher for the individual acts at
11 that time and the detail. He wasn't even in command of that
12 Base. He's way up next to the head man.

13 Maybe we can ask General Shank who's here on a different
14 appointment entirely. He's going into some other area now.

15 The thing is that while we have Guard people here, we
16 ought to ask them those questions, find out to the best extent
17 that we can what happened, and if there were wrong things done,
18 let's emphasize prevention for the future. And I don't think
19 that's an unfair inquiry.

20 SENATOR CRAVEN: I don't know that it is either, Senator
21 Petris, but I'd have to go back to say the testimony received by
22 this group has not indicated any culpability. There is nothing
23 that we can say or do or take any action that will in any
24 possibly assuage the grief of Mrs. Jordan. Absolutely nothing we
25 can do.

26 And I would be willing to make a prognostication myself
27 that there is nothing that we will say here today that in any way
28 is going to change what she already knows. Not one thing.

1 CHAIRMAN ROBERTI: Would you please answer.

2 BRIG. GEN. CARROLL: Yes, sir.

3 Predictable accident. The only thing I can say about
4 that is that the individual who made the accusation of a
5 predictable accident left the unit some years ago under less than
6 happy circumstances.

7 It's real easy to make a shot like that and say, "You're
8 going to have an accident," in a Fighter Unit, because eventually
9 you are going to have one. We feel about as badly about it as
10 anyone could possibly feel. We deeply regret it for both
11 families.

12 We were accused of this back some years ago by this
13 individual, and at the time Congressman Pashayan talked to both
14 myself, General Thrasher and General Shank and voiced his
15 concerns. And I happened to go to Washington and talk to him,
16 and he made the same statement; he says, "This individual says
17 that you're going to have an accident." My answer to him was,
18 "Yes, sir, we probably will one day, sometime. I'm going to
19 deeply regret it, and I hope we don't, but he may be right."

20 So he said, "Well, what I should do in this case is," he
21 says, "I don't have the expertise, so therefore I'm going to ask
22 that an investigation be made of your unit." I said, "Fine."

23 So at that time or shortly thereafter, he asked for an
24 independent group of people to come down to our unit to look at
25 our unit. It was the Major General Osgood commission that was
26 formed. They came down and took a look at our unit, and everyone
27 agreed to abide by the results of that investigation; letters
28 were signed.

1 Basically they found some things they wanted to talk to
2 us about, and basically I think they found that we had a good
3 outfit. And then we had an accident.

4 And we have just since completed an evaluation this past
5 weekend where we had about 35 Air Force Inspectors in to take a
6 look at our unit. We had an Excellent rating. It's been the
7 same rating that we've had over the past eight inspections, and I
8 think we have a good outfit.

9 I can't really comment on -- other than that, when a
10 person makes a prediction that a flying outfit is going to have
11 an accident sometime, other than to say yes, he's right, but
12 that's not a very nice comment to make by an individual.

13 The question that has to do with the -- that Senator
14 Petris asked concerning the fuel tank on the airplane, it's a
15 standard, 600-gallon tank. It's called a High Speed Centerline
16 Tank. It's used on the F-4s; it's been used for a long, long
17 time. We use it on our day-to-day training missions. It's an
18 Air Force approved fuel tank. We don't have any different size,
19 or they don't hold different amounts of gasoline. They're all
20 the same.

21 They're flown on the day-to-day missions with no
22 problem. As a matter of fact, we just returned from Alaska.
23 About three weeks prior to this accident, we flew nothing but low
24 altitude missions in Alaska. Major Jordan was on that mission,
25 and Major Jordan was a highly respected backseater.

26 We came back from that mission, and we flew two weeks up
27 there in the mountains in Alaska; a pure low altitude mission.
28

1 We had a tanker which gave the aircraft fuel as we were right out
2 there in the area, so we had varying amounts of gas in the
3 Centerline tank, ranging from completely full to empty. It's a
4 perfectly safe operation.

5 So, I have seen nothing in the -- we feel perfectly safe
6 using the tank. I don't know what to say on that other than --

7 SENATOR ELLIS: Let me interrupt.

8 CHAIRMAN ROBERTI: Yes, Senator Ellis.

9 SENATOR ELLIS: Do you carry the Centerline tank on all
10 flights?

11 BRIG. GEN. CARROLL: Almost every flight, yes, sir.

12 When we first got the airplane, we carried two external
13 wing tanks. Now we don't carry those; we carry the Centerline
14 tank only, and this was the configuration.

15 SENATOR ELLIS: Captain Deane, was he on the Alaska
16 trip?

17 BRIG. GEN. CARROLL: He was not, no sir.

18 SENATOR ELLIS: But was Captain Deane accustomed to
19 flying with a Centerline tank?

20 BRIG. GEN. CARROLL: Yes, sir.

21 SENATOR ELLIS: On what occasions do you not carry it?

22 BRIG. GEN. CARROLL: Well, very, very rarely. On
23 occasion we may have, for one reason or another, a plane that has
24 no tank on it; it's called a Clean Airplane.

25 I wouldn't want to even guess the percent missions, but
26 I would say probably 10-15 percent, maybe.

27
28

1 SENATOR ELLIS: So maybe 10 or 15 percent of the time
2 the pilot would fly an airplane without a Centerline tank?

3 BRIG. GEN. CARROLL: Yes, sir. The vast majority of the
4 time it's all Centerline tank. That's our standard
5 configuration.

6 SENATOR ELLIS: Thank you.

7 CHAIRMAN ROBERTI: Thank you very much, General.

8 One other question which I would like to raise also
9 concerns testimony which began with Mrs. Jordan but was dealt
10 with during the length of the testimony two weeks ago.

11 That was, when we inquired as to the reasons why the
12 accident took place, she indicated, and I think it was borne out
13 by the testimony, that she never really got a full story for
14 quite some time.

15 Now, we're told that that is the standard policy. Is
16 that the standard policy in all Air Force situations, or standard
17 policy for the Fresno Base?

18 BRIG. GEN. CARROLL: No, sir. We have no policy of our
19 own. That's the standard policy.

20 CHAIRMAN ROBERTI: General McMerty seemed to indicate it
21 was never going to change, or wasn't about to change.

22 BRIG. GEN. CARROLL: Well, I hope it doesn't change.

23 GENERAL THRASHER: Mr. Chairman, General McMerty was
24 kind enough to come back again today if you have specific
25 questions again for him.

26 But his answer, I believe, in the testimony was that
27 it's a cumbersome, lengthy, awkward process, but pretty much six
28

1 to seven months is how long it takes to release the reports, and
2 that was the case here.

3 CHAIRMAN ROBERTI: Are there any other questions?

4 Is there anyone here in opposition who did not testify
5 two weeks ago? Yes, please come forward.

6 Mr. Donald Colton?

7 LT. COL. COLTON: Yes, sir.

8 CHAIRMAN ROBERTI: Please come forward.

9 LT. COL. COLTON: Mr. Chairman, Members of the
10 Committee, good afternoon. I'm Lieutenant Colonel Donald A.
11 Colton, retired, of the California State Military Reserve.

12 I was retired from the State Military Reserve because of
13 my advanced years and against my will.

14 I am free to exercise my right as a citizen to speak and
15 to be heard. My career is not in jeopardy for doing so.

16 I'm a professional soldier with an abiding interest in
17 electronic communication systems. I enlisted as a private
18 soldier in the Massachusetts National Guard in 1938; received a
19 discharge in order to enlist in the United States Army in 1939.
20 I was commissioned a Second Lieutenant in the Army of the United
21 States in 1942 and retired with a grade of Major in 1959.

22 I have over 20 years of active federal service.
23 Approximately half of my active duty with the U.S. Army was spent
24 outside the continental United States. Four of those years
25 serving in combat zones.

26 When I joined the California State Military Reserve, it
27 was in response to a plea for amateur radio operators to
28

1 volunteer their services to the State Military Reserve so that
2 they, the SMR, might be better prepared to serve the citizens of
3 the State in the event of some man-made or natural catastrophe.
4 The rationale given was that in the event that the National Guard
5 was committed elsewhere -- Panama, Nicaragua, wherever -- we, the
6 California State Military Reserve, would be the only military
7 force that the Governor or any of the State agencies, such as the
8 Office of Emergency Services, the Forestry Service, Caltrans, or
9 whoever, might call on for assistance.

10 To that end, the Communications Electronics Section of
11 the SMR responded to the challenge of a "show me" from a National
12 Guard staff officer, and with the cooperation of the 1st Aviation
13 Group, put together an operation that provided communications
14 capability for a National Guard convoy traveling from Camp
15 Roberts to their home armory in Chico. The communications was
16 provided to the Operations Center at Watt Avenue.

17 We also provided amateur radio television coverage of
18 this particular convoy from the aircraft, again, to the Watt
19 Avenue Headquarters over a good portion of that route.

20 The aviators who flew this mission rented the airplanes
21 out of their own pockets. The aviators provided insurance
22 coverage out of their own pockets. The aviators provided the
23 gasoline out of their own pockets.

24 The amateur radio operators provided their personally
25 owned equipment, radio and television equipment, costing many
26 hundreds of dollars out of their own pockets.

1 All this so that we might prove to some very skeptical
2 National Guard officers that the SMR was capable of providing
3 some valuable service or services to the State; services that
4 might be very useful in the event of a catastrophe or emergency.

5 All the individuals mentioned above -- the aviators, the
6 communicators -- were forbidden to act in the name of the State
7 Military Reserve or to wear the uniform, flight clothing
8 included, that might identify the individual with the SMR.

9 Incidentally, Major General Shank witnessed a portion of
10 that operation from the Operations Center. And I'm not sure that
11 he realized the significance of what he was witnessing.

12 I have no quarrel with General Thrasher. I have never
13 met the gentleman.

14 I do, however, have a quarrel with the National Guard as
15 exemplified by General Thrasher.

16 I would ask why was I and so many others summarily and
17 capriciously dismissed or retired from the SMR? Am I, because of
18 some mysterious biological clock, unable to serve the citizens of
19 California after the age of 64? Am I too weak to operate a
20 microphone button or to keep a chronological journal of a radio
21 station? Am I too senile to plan, organize and to implement a
22 communications plan to cover the exigencies of a disastrous or
23 potentially disastrous situation?

24 Why was the Aviation Brigade broken up, dispersed,
25 forbidden to fly, when the legislation that provided funding for
26 the SMR specifically allocated funds for the Aviation gas and for
27 training purposes?

28

1 Why is the Civil Air Patrol and the Coast Guard
2 Auxiliary vying for the services of the retired and disgruntled
3 pilots of the SMR?

4 Why was the Medical Brigade, whose members provided many
5 thousands of hours of service to the National Guard, saving the
6 National Guard many thousands of dollars in fees, why were they
7 dismantled?

8 Why has the National Guard emasculated the State
9 Military Reserve, thus robbing the citizens of California of a
10 resource that has been mandated by legislation and might be
11 sorely need one of these days?

12 Why is the National Guard even as I speak changing or
13 causing changes to the SMR regulations? What is the National
14 Guard afraid of?

15 I submit that the National Guard is suffering from the
16 "not invented here" syndrome; that they're afraid that the old
17 fogies might do something useful and show them up. That, as the
18 Department of Defense becomes more and more aware of the
19 potential of the State defense force, that the National Guard
20 might be relegated to a different role, thus breaking up the
21 "good ol' boys" network.

22 This, Mr. Chairman, is the way I see it. The views I
23 have expressed here today may or may not be a reflection of the
24 views of others.

25 CHAIRMAN ROBERTI: My problem, Mr. Colton, and your
26 testimony is very interesting, is that after the hearing of two
27 weeks ago, I don't know which is the "good ol' boys" network.
28 Maybe there were two of them.

(Laughter.)

CHAIRMAN ROBERTI: Or maybe the reformers are in and the "good ol' boys" are out; or maybe the "good ol' boys" are in, and the reformers are out.

I mean, it was very, very baffling to a layman to hear this.

LT. COL. COLTON: Your point is well taken, sir.

However, I would like to remind the Committee that the State Military Reserve serves without pay, providing their own uniforms, providing their own equipment except for the modest funding that the legislation has provided. Not so with the National Guard.

But I do have one thought that I would like to say in closing. How do you fire a volunteer?

I thank you, sir.

CHAIRMAN ROBERTI: Thank you very much, Mr. Colton.

Senator Mello has requested and therefore moves that we have a five-minute recess, at which time motions will be in order.

(Thereupon a brief recess was taken.)

CHAIRMAN ROBERTI: The Committee will come to order.

I might just momentarily address the testimony on General Thrasher that we have heard both today and even more extensively two weeks ago.

I'd like to say that, as I indicated before the recess, that to laymen and laywomen listening to the testimony, it's befuddling, to say the least. We have had people who have had

1 positions of very high responsibility, the highest ranking
2 officers, if you will, testify on both sides of this issue.

3 All that said and done, and important as all that
4 testimony has been and including and not to underestimate the
5 testimony that was offered by Mrs. Jordan, which was very
6 poignant and moved us, I do not feel that the central ingredient
7 has been proved, and that is, General Thrasher's direct
8 involvement in the decision regarding the airplane crash, the
9 decisions that led up to the airplane crash involving Major
10 Jordan and Captain Deane.

11 Also as a layman, I feel that there is a measure of
12 mismanagement at National Guard Bases, maybe not specifically the
13 Fresno Base, but I would say including the Fresno Base. Now,
14 what the reasons are for this are very difficult to come up with.
15 Is it specific personnel that are currently leaving the Base? Is
16 it the personnel that formerly led the Base? Is it the general
17 National Guard policy or the specific service that happens to be
18 running an aspect of the Base, such as the specific Air Force
19 policy? Or is it just the traditions-old enormous bureaucracy
20 that the military has become, maybe out of necessity?

21 But the questions that have been raised are serious
22 enough that I think we have a duty as officeholders in the State,
23 with our bifurcated responsibility with the federal government
24 for the National Guard, to ask for an audit.

25 Therefore, today I have asked that the Joint Legislative
26 Audit Committee, as Chaired by Assemblyman Bronzan, conduct a
27 performance audit of the State National Guard as soon as
28

1 possible. I think that's very important because there are more
2 questions that have been raised than we could possible answer in
3 one confirmation hearing.

4 However, in regard to General Thrasher's immediate
5 qualifications, there have been questions raised. They're
6 serious questions, but I personally do not feel that the case of
7 his culpability or personal negligence has been proved.

8 Conversely, a number of good reports regarding the
9 General have been put into the record, and I think I should
10 mention that as well.

11 So I personally am going to vote for confirmation. It's
12 a difficult question, and I'm not saying that as the Chair of the
13 Committee, requesting, demanding or otherwise, that everyone sees
14 it my way, but that's frankly how I see it after two days of
15 testimony.

16 Senator Ellis.

17 SENATOR ELLIS: The audit by the Joint Legislative Audit
18 Committee --

19 CHAIRMAN ROBERTI: The Auditor General would be the one

20 SENATOR ELLIS: The Auditor General, right.

21 CHAIRMAN ROBERTI: They supervise it.

22 SENATOR ELLIS: All right.

23 SENATOR PETRIS: We need another General in this.

24 (Laughter.)

25 CHAIRMAN ROBERTI: The Joint Legislative Audit Committee
26 will then empower the Auditor General to make the audit. I
27 should have made that clearer.
28

1 SENATOR CRAVEN: Could you tell me, Mr. Chairman, what
2 would be involved there?

3 CHAIRMAN ROBERTI: Questions regarding the efficiency of
4 the Bases, specifically in regards to the expenditure of taxpayer
5 dollars, which all the decisions seem to involve.

6 I think we have a legitimate interest to know if the
7 taxpayer dollars are being spent efficiently.

8 SENATOR CRAVEN: The payment of --

9 CHAIRMAN ROBERTI: I think, Senator, no matter what side
10 you happen to believe, there is a problem. The people who are in
11 right now indicate, or seem to indicate, there were an awful lot
12 of mistakes that took place with the prior administration of the
13 Base.

14 The prior administration of the Base, Generals all, at
15 one time seemed to indicate that the current administration has
16 created an awful lot of problems.

17 Both sides say there's a problem, and we can't ignore
18 that. We just don't have a clear handle on who is at fault.

19 SENATOR CRAVEN: Mr. Chairman.

20 CHAIRMAN ROBERTI: Yes.

21 SENATOR CRAVEN: There's an old saw that covers exactly
22 what you've said. I first ran into when I was a youngster, a
23 Private at Parris Island, South Carolina.

24 I was in company of somebody who'd been there two weeks
25 ahead of me. And I was complaining about something, I don't
26 recall what it was, but my compatriot who was two weeks senior to
27 me -- he was also a Private -- he said what is a very famous line
28

1 in the Marine Corps. He said, "It was never like this in the old
2 Corps."

3 (Laughter.)

4 Well, that's about what you're talking about now.

5 I'll tell you, if you ever have the plebiscite, or run a
6 popularity contest in the military, you're going to find some
7 very, very interesting things. I've never served under anyone --
8 and I know Senator Ellis, who has extensive Naval service, hasn't
9 either -- that we couldn't find something wrong with them.

10 You know, the commanding officer's not always the most
11 sainted character in the world. He has, you know, humanistic
12 traits just like the rest of us, and he errs just as we do at
13 times. It's unfortunate but it's true.

14 But I don't know really what this audit group, headed by
15 Mr. Bronzan that you made mention of --

16 CHAIRMAN ROBERTI: No, he will empower, if the Committee
17 so chooses as I suspect they will, the Auditor General to make
18 the audit.

19 SENATOR CRAVEN: Okay, so the Auditor General is going
20 to come in, and he's going to look at things that operate, as I
21 understand it, under federal regulations.

22 Is that correct?

23 CHAIRMAN ROBERTI: That's right. The National Guard is
24 a bifurcated system for which we have some responsibility as
25 well, and --

26 SENATOR CRAVEN: Well, we have responsibility,
27 obviously, and they serve us, I think, very, very well.
28

1 But I don't think we have responsibility in setting the
2 policy of their operation. I don't think we have anything to do
3 with that. I think that's federal.

4 CHAIRMAN ROBERTI: Senator Ellis.

5 SENATOR ELLIS: But we do have a Code that covers the
6 Military Department.

7 SENATOR CRAVEN: Yes.

8 SENATOR ELLIS: And we have statutes that cover them and
9 so on.

10 I don't know when the last time was that that was
11 reviewed and, perhaps, amended, but it seems like after listening
12 to some of this testimony, that somebody should look at something
13 in there in regards to the chain of command if nothing else and
14 decide who is the administrative control and the operational
15 control, and things of that sort. Apparently there is none.

16 SENATOR CRAVEN: Well, I get the impression, and perhaps
17 you do as well, that what we have heard has indicated to us that
18 the Guard, whatever arm of it we may be discussing, does not
19 operate with what I would call strict adherence to that which you
20 were familiar with, or what I am familiar with, or what Nick is
21 familiar with. It's just a little different organization,
22 because factored into this is a little more latitude on the part
23 of commanders to do things that do not exist in what we're used
24 to.

25 Is that not correct?

26 SENATOR ELLIS: Yes, but I don't think the Auditor
27 General will go into such matters that would pre-empt federal law
28 or federal regulations of the U.S. Air Force or U.S. Army.

1 I think the Auditor General will be looking at our Code,
2 our Military Code, to see what he thinks, and I think that's
3 appropriate.

4 SENATOR CRAVEN: May I ask, Mr. Chairman, a question of
5 the General?

6 CHAIRMAN ROBERTI: Yes.

7 SENATOR CRAVEN: General Thrasher, how extensive is the
8 Military Code to which Senator Ellis has referred as it relates
9 to what you do?

10 GEN. THRASHER: I think that the authority does exist,
11 and I think it has occurred before. We had a similar audit, and
12 I want to reflect, about ten years ago, perhaps a little longer.

13 And as the Director, I would just add, Senator Craven, I
14 certainly have no objection to the audit. It may in fact be
15 helpful.

16 CHAIRMAN ROBERTI: Thank you, General.

17 SENATOR MELLO: Perhaps the General would know, how much
18 money are we talking about in California taxpayer dollars that go
19 into your Department?

20 GEN. THRASHER: Well, the total budget is \$364 million
21 per year. Of that, the State now, I believe, is about 22
22 million, so it's about a 5 percent-95 percent State-federal.

23 SENATOR MELLO: Well, 22 million is not chicken feed.

24 GEN. THRASHER: No, sir.

25 SENATOR MELLO: Senator Roberti's idea of the audit is
26 not to supersede what the federal guidelines are, but it's to
27 protect and identify the investment that we're making in
28

1 California to some \$22 million, to see how this money's being
2 spent.

3 CHAIRMAN ROBERTI: Thank you, Senator.

4 One positive point also on the matter regarding the
5 crash of Jordan and Deane is that I was glad to hear that the
6 Fresno Base has changed its methodology. Hopefully that will
7 spread to the other Bases as well, where the pilot cannot enter
8 his own currencies, as you put it, or his own, in effect,
9 qualifications to fly certain kinds of missions.

10 SENATOR CRAVEN: Are you ready for a motion, Mr.
11 Chairman?

12 CHAIRMAN ROBERTI: Yes, I am ready for a motion.

13 SENATOR CRAVEN: I would move confirmation to the Floor.

14 CHAIRMAN ROBERTI: Senator Craven moves confirmation of
15 General Thrasher to the position of Director and Adjutant General
16 of the State Military Forces.

17 Secretary will call the roll.

18 SECRETARY WEBB: Senator Ellis.

19 SENATOR ELLIS: Aye.

20 SECRETARY WEBB: Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Senator Petris. Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote is four to nothing; the confirmation is
27 recommended to the Floor.
28

1 GEN. THRASHER: Thank you very much.

2 CHAIRMAN ROBERTI: The matter of Willard A. Shank,
3 Member of the Public Employees Relations Board is before the
4 Committee.

5 I think we heard your testimony, both in support and
6 opposition, rather extensively a month ago.

7 I would say that -- I almost would repeat my remarks --
8 saying that it is just too difficult for us to make a decision
9 saying that the mismanagement of the Base, if there was some, is
10 directly attributable to you, even though that's what the
11 testimony indicated.

12 I think in that case the appointment should be given the
13 benefit of the doubt.

14 Once again, all I can add is that the testimony has been
15 befuddling, but you are now being appointed, I'm sure, to another
16 position, and my feeling is that your qualifications are very,
17 very high for that position.

18 So, if there has been a problem, although it won't
19 directly affect you any more, I hope that the audit will bring
20 that out so that any problems that occur in the future will not
21 remain.

22 However, I'm ready to hear a motion on Willard A. Shank,
23 Member of the Public Employees Relations Board.

24 SENATOR CRAVEN: So move, Mr. Chairman.

25 CHAIRMAN ROBERTI: Senator Craven moves the confirmation
26 to the Floor.

27 Secretary will call the roll.
28

1 SECRETARY WEBB: Senator Ellis.

2 SENATOR ELLIS: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Senator Craven.

8 SENATOR CRAVEN: Aye.

9 SECRETARY WEBB: Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 The vote is five to nothing; confirmation is recommended
12 to the Floor.

13 MR. SHANK: Thank you, gentlemen.

14 CHAIRMAN ROBERTI: The nomination of Paul R. Deats,
15 Member of the California Horse Racing Board.

16 Mr. Deats, we'll ask you what we ask all the Governor's
17 Appointees: Why do you feel you're qualified to assume this
18 position?

19 MR. DEATS: Senator, I've been in racing as a breeder
20 and licensed owner since 1966 up until 1983, when I was
21 appointed, first appointed, to the California Racing Commission,
22 at which time the administration asked me not to race because
23 they considered it a conflict of interest.

24 Presently I am retired. I have a ranch in Santa Ynez
25 Valley, and my horse experience now is limited to working cattle
26 and riding for pleasure.

1 I have been on the California Racing Board since
2 September of 1983. I'm starting into my second year as Chairman.
3 I'm elected as Chairman by my peers, and I think I've had
4 something to do with horses or horse racing since I was big
5 enough to get on one.

6 If there's any specific questions you have, I'd be happy
7 to answer them.

8 CHAIRMAN ROBERTI: Senator Maddy has a bill of some
9 controversy regarding the satellite wagering.

10 Have you taken a position on the bill?

11 MR. DEATS: Senator Maddy's bill, SB 14, has probably
12 been the best thing that's happened to racing in recent years.
13 We're really on a roll. We've increased our handle by 100
14 million in 1987. We've increased the State revenues, the State
15 takeout, to 140 million for the fiscal year, as opposed to 138
16 million in 1986, and this is just the beginning.

17 We're in our infancy in satellite wagering. We're
18 learning a lot as we go along, and we're looking forward to
19 continue to lead the nation in racing. California's presently,
20 and has been for many years, the envy of the nation, so I'd say
21 that California racing is really on a roll.

22 CHAIRMAN ROBERTI: Senator Ellis.

23 SENATOR ELLIS: If our Sergeants could hold them down in
24 the hallway out there, it would help. We can hardly hear up
25 here.

26 I have always opposed the wagering stuff, and I guess
27 it's rather naive of me to say that I don't see why horses can't
28 race without you betting on them.

1 But Senator Maddy has jumped on me for several years
2 now, saying that there would be no horse racing if you did not
3 bet on them.

4 However, I did take on his satellite wagering bill
5 because, first of all, it's the first step towards what I refer
6 to as horse parlors. Next you will have them -- in our San Diego
7 paper, they had a Santa Anita satellite at Del Mar last weekend,
8 and \$100 million was wagered at Del Mar on a horse race at Santa
9 Anita.

10 My concern is that next you will have the betting,
11 electronic betting in all the 7-11s, just like you have Lottery.
12 And we'll be betting even more millions.

13 Probably all right, except people only have a certain
14 amount of discretionary money to use, and you can't unless you're
15 extremely wealthy. The average persons are budgeted: they know
16 what they have for entertainment; they know what they have for
17 food, clothing, et cetera. And they can't get any more out of
18 them. I mean, you can't squeeze any more out of them.

19 So it just seems to me that to, perhaps, move towards a
20 little bit more responsibility in our society as a whole, we
21 ought to look more critical about expanding the opportunity to
22 gamble.

23 MR. DEATS: Senator Ellis, it's a very complicated
24 industry, going all the way from agriculture, which a tremendous
25 item for the State of California or any other State. It's a big
26 contributing factor, and probably the horse industry is the
27 fourth largest economic factor that we do have in the State.
28

1 Now, if you talk about wagering, let's kind of relate it
2 to the Lottery. Lottery generated \$3 billion in their coffers in
3 the first two years of operation. Your chances of winning on a
4 Lottery are very slim.

5 But 82 percent of every dollar that's wagered in horses
6 goes back to the bettor. So, if you are a good, fantastic,
7 scientific handicapper, you have a pretty good chance.

8 In answer to your observation about would you have an
9 interest in horse racing if you didn't have gambling, I doubt if
10 it would be anything like it is today, because I think most of
11 the horse racing that started out for fun -- in particular take
12 Los Alamitos. When I went there years ago when the original
13 person owned it, we had Sunday races, and we bet among ourselves.
14 And that's how Los Alamitos got started as a parimutual track.

15 So, I think that the public does want to wager. I think
16 they do have a good chance. I think it's a very high class
17 sport. I think of it more of a sport than I do as gambling.
18 It's been a tremendous impetus to our State.

19 So, I don't think presently -- all Boards change, but
20 certainly I don't think this present Board would ever support
21 betting parlors. I think the main impetus in SB 14 is, it
22 provided a much needed revenue for the fairs to make their
23 improvements. It's very difficult for them to keep up with the
24 demands for the maintenance and improvements, and SB 14 has
25 certainly provided and will provide a steady source of income so
26 that if bonds are sold or marketed to increase the fairs'
27 facilities, they will have a decent chance of selling those
28 bonds.

1 Now, I think that benefits the local communities.

2 But as far as betting parlors per se, as they have in
3 New York, as they have in Europe and England, I don't think your
4 present Board will ever support it.

5 So, when we say this is a prelude to something else, I
6 have my doubts about that, sir.

7 SENATOR ELLIS: Thank you.

8 CHAIRMAN ROBERTI: Senator Petris.

9 SENATOR PETRIS: I have some questions on labor
10 relations.

11 I've had considerable contact with employees in my area
12 who usually come to see me when they have a big problem about
13 labor relations with the track. Now, they don't deal with the
14 Board, but one of the complaints is, there doesn't seem to be any
15 grievance procedure in any of our statutes that would be
16 providing a mechanism for a track employee, let's say a
17 parimutual clerk, for example, who has grievances against
18 management at a particular track, to go through any kind of a
19 mechanism that we have in other areas of labor. You know, we
20 have Labor Boards and commissions, and this and that.

21 And efforts to accomplish that have never had the
22 support of the Board.

23 Would you support some kind of a mechanism that would
24 provide an avenue for a peaceful solution, mediation, whatever it
25 takes, on labor disputes?

26 MR. DEATS: Certainly, Senator Petris. I think that's a
27 very fair observation.
28

1 I don't know whether that would require specific
2 legislation to get that before the Board. I can't think of any
3 mechanics now.

4 We do have parimutual clerks, and so forth, that come
5 before Steward's Committees, and come before the Board for
6 grievances against them. And also, we have more or less a
7 hearing to decide.

8 And there's no reason why we couldn't have mechanics to
9 hear their grievances and settle them on a Board basis.

10 SENATOR PETRIS: What kind of hearings do you now have
11 in that area, that field?

12 MR. DEATS: Actually, we have had, in my four-and-a-half
13 years on the Board, I only remember one particular case where we
14 had a grievance from an employee, and that was -- this was a case
15 of a lady claiming discrimination, the fact that she was a female
16 employee. And we had a full-blown hearing on that, took
17 testimony, and made a decision.

18 So, we do have mechanics to hear that, and I don't
19 believe anybody's ever been denied an opportunity to come to the
20 Board with a grievance.

21 SENATOR PETRIS: If someone has a complaint, let's say
22 being fired without valid cause, would they come before the
23 Board?

24 MR. DEATS: No, generally they're all union employees.
25 We do recognize organized labor. And I would say that 99 and
26 nine-tenths percent of those complaints come through the union
27 representation.
28

1 SENATOR PETRIS: Through the stewards and the union
2 grievance procedure?

3 MR. DEATS: That's correct, sir.

4 SENATOR PETRIS: At each individual track?

5 MR. DEATS: That is right, uh-huh.

6 SENATOR PETRIS: SB 14 that was mentioned had a
7 provision about requiring the tracks to deal with the union that
8 represents the employees at the nearest track in the new
9 satellite off-track betting provided in Senator Maddy's bill.

10 One of the tracks refuses to go along with that. Is it
11 the Board's duty to see that that's enforced?

12 MR. DEATS: I don't believe that the Board has
13 jurisdiction in this particular area because -- and I think it
14 will be settled either by legislation or a civil matter --
15 because the fairs claim in this particular instance that they
16 have the right to exhaust the State labor pool rather than go to
17 organized labor for their help. Probably --

18 SENATOR PETRIS: Now, that's very artfully constructed,
19 that sentence.

20 Would you run me through that again?

21 MR. DEATS: Well, fairs claim -- and you're speaking of
22 the 22nd Agricultural District in Del Mar.

23 SENATOR PETRIS: This particular case is the Del Mar
24 Fairgrounds.

25 MR. DEATS: Del Mar. They claim, their claim is, Fair
26 Board, that they are mandated to exhaust the State labor pool for
27 their help in a fair.
28

1 SENATOR PETRIS: Meaning what? State employees?

2 MR. DEATS: Yes.

3 SENATOR PETRIS: Or people in the State?

4 MR. DEATS: State employees.

5 On the other hand --

6 CHAIRMAN ROBERTI: If I could just interrupt you for one
7 second.

8 I'm going to turn the gavel over to Senator Craven. I
9 have to leave for about 40 minutes or so.

10 SENATOR CRAVEN: Well, I'll be happy to take it over for
11 about six minutes, because I have to do the same thing. I have
12 about 60 people right down the corridor waiting.

13 CHAIRMAN ROBERTI: Please continue, Mr. Deats.

14 MR. DEATS: All right, still answering Senator Petris'
15 question about labor, on the other hand, the union representing
16 the employees -- I'll wait.

17 CHAIRMAN ROBERTI: Yes, I'm sorry.

18 MR. DEATS: Thank you, Senator Roberti.

19 The union representing employees at the track have a
20 different claim. They claim that the satellite operation is not
21 a fair operation, and therefore they should be represented.

22 We had Senator Maddy come before the Board to explain
23 the legislative intent of the paragraph or the phrase in his
24 legislation that referred to that point. And the Board has been
25 convinced by Senator Maddy that he intended to recognize
26 organized labor.

27

28

1 So, I think the thing will resolve itself, sir, I really
2 do. I think that in the end, the unions will represent the
3 employees at Del Mar.

4 SENATOR PETRIS: You think that's the way it will go.

5 Is that the only case that has --

6 MR. DEATS: That's the only case that has come before
7 us.

8 SENATOR PETRIS: The rest are going along with it?

9 MR. DEATS: I think this will set a precedent for any
10 that may follow.

11 SENATOR PETRIS: I see. Thank you.

12 CHAIRMAN ROBERTI: Any further questions?

13 SENATOR ELLIS: Move confirmation.

14 CHAIRMAN ROBERTI: Senator Ellis moves the confirmation
15 of Paul Deats, Member of the California Horse Racing Board.

16 Any opposition?

17 Secretary will call the roll.

18 SECRETARY WEBB: Senator Ellis.

19 SENATOR ELLIS: Aye.

20 SECRETARY WEBB: Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Senator Petris.

23 SENATOR PETRIS: Aye.

24 SECRETARY WEBB: Senator Craven. Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote is four to nothing; confirmation is recommended
27 to the floor.
28

1 SENATOR PETRIS: I had a question. It won't affect this
2 thing.

3 CHAIRMAN ROBERTI: Fine.

4 SENATOR PETRIS: How come all the member of the Board
5 are from Southern California? We have three good tracks up here
6 up north, and not one Northerner on the Board.

7 MR. DEATS: We do have a member from Bakersfield.

8 SENATOR PETRIS: That's not very far north.

9 (Laughter.)

10 MR. DEATS: And I can't really answer your question
11 because, as you well know, those are gubernatorial appointees,
12 and why they're all from one particular area I can't tell you.

13 But I can say for myself --

14 SENATOR PETRIS: I can understand yours. You used to
15 live in Long Beach. That's a pretty good connection.

16 MR. DEATS: Well, I'm in Santa Ynez now, and of course,
17 I was a farmer in Idaho around the chariot races.

18 SENATOR PETRIS: Where?

19 MR. DEATS: Preston, Idaho.

20 CHAIRMAN ROBERTI: If he's from Idaho, that's pretty far
21 north.

22 MR. DEATS: But I want to tell you, Senator --

23 SENATOR PETRIS: There again, my knowledge of Idaho is
24 limited to Pocatello, which is down south.

25 MR. DEATS: The center of chariot racing is no longer in
26 Rome, Italy; it's at Pocatello, Idaho.

27 SENATOR PETRIS: Pocatello?
28

1 MR. DEATS: Right.

2 SENATOR PETRIS: I'll have to go back.

3 MR. DEATS: Thank you, gentlemen, very much.

4 CHAIRMAN ROBERTI: Very good, Mr. Deats. Good to see
5 you.

6 The next appointment is Mr. Robert L. Harvey, Member and
7 Chairman of the Unemployment Insurance Appeals Board.

8 Mr. Harvey, it's good to see you again. What was it,
9 four years ago?

10 MR. HARVEY: Four-and-a-half years, yes, sir.

11 CHAIRMAN ROBERTI: So we'll ask you the question we
12 asked you then: Why you feel you're qualified, I guess, to
13 retain the position?

14 MR. HARVEY: Mr. Chairman, Members, as indicated by the
15 Chair, I have served as Chair and Member of the Unemployment
16 Insurance Appeals Board for the last four-and-a-half years.

17 I am an attorney. I've had substantial experience in
18 both private and public practice of law. I've had substantial
19 administrative law experience. I've served as a presiding
20 administrative law judge for the OSHA Appeals Board for
21 approximately eight years. I've been a lecturer and a Member of
22 the Board of Directors of the California Administrative Law
23 College, currently as an operative member of the National
24 Judicial College in Reno, and of course of high volume appeals.

25 I've been responsible for general administration of the
26 Appeals Board for the last four-and-a-half years. And in the
27 last -- since 1983, the efficiency has improved. We handle
28

1 approximately 140,000 cases at both the lower and high authority.
2 I won't take responsibility, but it's a very dedicated and loyal
3 staff that has presented a high level of administration of
4 justice in our particular area of Unemployment Insurance Law.

5 CHAIRMAN ROBERTI: Thank you, Mr. Harvey.

6 Are there any questions? Senator Petris.

7 SENATOR PETRIS: One of our new problem areas that has
8 emerged in California, as you well know, is the drug problem.
9 There's litigation on the right -- I don't know if there's
10 litigation now pending anymore or not, but on the question of an
11 employee who is fired because he or she refuses to take a drug
12 test.

13 And the question is, is that employee entitled to
14 Unemployment Insurance?

15 Has that policy been resolved at any court level?

16 MR. HARVEY: The Unemployment Insurance Appeals Board
17 issued a precedent decision about six months ago.

18 SENATOR PETRIS: Who did?

19 MR. HARVEY: Our Board.

20 SENATOR PETRIS: Your Board.

21 MR. HARVEY: Our Board delivered that issue for the
22 purpose of Unemployment Insurance. You realize it's still
23 pending before other judicial forums.

24 In our area, we have taken a position basically that
25 testing is appropriate only where there is probable or reasonable
26 suspicion to require a test. We do not condone random testing,
27 testing as a condition of employment, or other general concepts
28 of testing.

1 Probable cause followed by a reliable test and the
2 failure to comply with that can constitute misconduct, which
3 could affect eligibility for benefits.

4 To date we have not had any other major considerations
5 in this area. We know there's some other areas we have not dealt
6 with. We haven't dealt directly with the issue of precondition
7 for employment testing, for example. We threw out some dictum in
8 the precedent decision suggesting this would probably not be
9 allowable, but there was not a direct reference to that issue in
10 our decision.

11 We are concerned about the rights of the individual and
12 try to balance those against the rights of the employer regarding
13 our program.

14 SENATOR PETRIS: Your Board issued a decision, Number
15 454, that says an employee is not eligible on refusing to take a
16 test.

17 MR. HARVEY: In that particular case, yes, based upon
18 the criteria I tried to explain.

19 SENATOR PETRIS: The criteria you set forth, so it's not
20 a blanket thing. It depends on the nature of the job, and
21 whether it's sensitive, whether it affects other employees,
22 whether it affects the efficiency of the individual involved?

23 MR. HARVEY: That is correct, Senator.

24 In the case that you referred to, there was substantial
25 demonstration by the employee that something was amiss. And the
26 employee followed with an appropriate test. In that situation,
27 we found that to be disqualifying.
28

1 We tried to set forth some general standards, as you
2 have seen and described.

3 SENATOR PETRIS: Are there other cases now pending on
4 that? Is that a frequent occurrence, or has this decision kind
5 of clarified things for people involved?

6 MR. HARVEY: In our area it seems to have pretty well
7 clarified things. As I believe you are aware, precedent
8 decisions by the Board are also binding upon the Department of
9 Employment, so they have issued guidelines which will cause their
10 initial determinations to be in line with the contents of that
11 decision.

12 We've seen a few minor cases, and those are judged, too,
13 on a case-by-case basis. And the basic theme has been that we do
14 recognize individual rights against self-incrimination and the
15 right to privacy.

16 SENATOR PETRIS: What about the accuracy of the tests?
17 We've heard conflicting reports about just how accurate they are.
18 Some people claim there's a very low accuracy rate.

19 MR. HARVEY: That's a constant concern. As I mentioned,
20 we do look at these on a case-by-case basis.

21 In that vein, at our training session that we had in
22 Sacramento with all of our administrative law judges present, we
23 did provide experts on both sides to question or to explore and
24 to reveal the various elements, the reliability, of testing that
25 are essential to have a valid test.

26 And the decisions I've seen from our judges indicate
27 that they are following those guidelines. We've had some test
28

1 results which have been ruled invalid because of the credibility
2 of the test, so we have tried both educate our judges, and
3 members of the Board, I believe, are individually aware of those
4 criteria. We try to apply those on each case.

5 SENATOR PETRIS: What about an employee who takes a
6 test, fails to pass, and is fired? What's the status on
7 Unemployment benefits there? What's the rule?

8 MR. HARVEY: The basic thrust is that failure to comply
9 with the direct order to take the test can constitute misconduct.
10 However, if the individual, based upon the overall criteria, has
11 no obligation to take the test -- that is, that he has not
12 demonstrated any behavior, for example, which would raise
13 reasonable suspicion that he's under the influence of drugs --
14 then the test in itself, the test request's invalid, so his
15 failure to comply would not be misconduct because it was an
16 improper request.

17 SENATOR PETRIS: What about the employee who takes the
18 test. He says, "Okay, you want me to take the test; I'll take
19 it." He flunks. Then he's fired.

20 Is that employee eligible for Unemployment Insurance?

21 MR. HARVEY: The Board as a Board has not spoken to
22 that. There have been individual decisions and panel decision in
23 some cases saying yes, that does constitute misconduct.

24 I had a case I looked at recently where the employee had
25 had a six-month problem with alcohol and drugs. The employer and
26 the employee signed an agreement of continued employment through
27 a probationary term which provided that the employee shall submit
28

1 to future test if there was any suspicion that they were abusing
2 substances again.

3 In that case the second test came up, and it revealed
4 positive. The employee was terminated, and the benefits were
5 denied in that case based primarily upon the agreement that the
6 employee had consented to the test, the condition was of
7 continued employment. Theoretically, the employer argued, he
8 could have fired him after the first positive test.

9 But in that case benefits were denied because of failure
10 to comply or to pass the test.

11 That's an individual case, and we have, as I've
12 mentioned, have not spoken to the issue as a full Board. It's
13 something perhaps we will if cases of this nature continue to
14 arise.

15 We will try to balance individual right of privacy and
16 guard against self-incrimination against the right of the
17 employer to be sure that there is a drug-free environment for
18 both the public and other employees.

19 SENATOR PETRIS: Thank you.

20 CHAIRMAN ROBERTI: Thank you, Senator.

21 Any other questions?

22 SENATOR ELLIS: Move confirmation.

23 CHAIRMAN ROBERTI: Senator Ellis moves Mr. Harvey's
24 confirmation to the Floor.

25 Is there any opposition in the audience?

26 Seeing none, Secretary will call the roll.

27 SECRETARY WEBB: Senator Ellis.
28

1 SENATOR ELLIS: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven. Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 The vote is four to nothing; confirmation is recommended
9 to the Floor.

10 Congratulations.

11 MR. HARVEY: Thank you, gentlemen.

12 (Thereupon this portion of the Senate
13 Rules Committee hearing was terminated
14 at approximately 4:03 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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17 1:55 P.M.

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26 Reported by:

27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

SENATOR MARIAN BERGESON

HENRY AGONIA, Director
Department of Parks and Recreation

MEREDITH J. KHACHIGIAN, Member
Regents of the University of California

VALERIE J. REYNOSO, Deputy Director
Employment Development Department

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HENRY AGONIA, Director
Department of Parks and Recreation

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Board of Regents of the University of California

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VALERIE J. REYNOSO, Deputy Director
Employment Development Department

12

Motion

12

Committee Action

13

Termination of Proceedings

13

Certificate of Reporter

14

P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointee for vote only is Henry Agonia, Director of the Department of Parks and Recreation. We had held this up for the vote because Senator Mello had some questions of Mr. Agonia.

SENATOR MELLO: Mr. Chairman and Members, thank you very much for allowing this to be put over back when it was.

I've had a chance to talk to Mr. Agonia and acquaint him with some of the problems that we have not only in my area but throughout the state.

I would, with the Chair's permission, ask that he come forward.

CHAIRMAN ROBERTI: Yes, please, Mr. Agonia.

SENATOR MELLO: Henry, I appreciate having a chance to work with you and get to know more about your background.

This issue came up and has come up from CORVA, you know, the off-road vehicle people, and Mr. Bates who is here in the audience -- and I know we're not taking any testimony at this time -- but he wanted me to relate to you their concern, and that is for the Anza Borrego State Park where the off-road vehicle use was curtailed or terminated.

What they would like to know from you is, will you arrive at some accommodation with the off-road vehicle users which would permit them access to Anza Borrego State Park designated routes of travel and come up with some kind of simplified permit process that they could regain some of the recreation that they once had in that area?

1 MR. AGONIA: I can answer that, Senator Mello, by --
2 when we established the restriction, we did allow -- one of the
3 statements made is that we would allow access on a group permit
4 basis.

5 The old permit process, the process that we had in
6 regards to the Department allowing that, was somewhat cumbersome,
7 and because of the liability insurance requirement was basically
8 extensive.

9 But what we are doing is revising that permit which
10 would, in a sense, allow access as requested by CORVA.

11 SENATOR MELLO: And that would not be the cumbersome
12 process --

13 MR. AGONIA: It would be a simple -- a simple permit.
14 Basically the reason that we want the permit is, one, we want
15 that contact. We want to be able to at least face the
16 individuals and assess or actually inform them of the rules and
17 regulations of entering the unit. The other is that we want to
18 make sure that their vehicles are properly licensed, their
19 vehicles have spark arresters and the right muffler system, all
20 those kinds of things. That would be part of that permit.

21 SENATOR MELLO: Would you be willing to meet with Mr.
22 Bates and his organization to help work out this permit? Also
23 some of the concerns they had were about utilization.

24 MR. AGONIA: Yes, I would.

25 SENATOR MELLO: And I think Mr. Bates is nodding his
26 head in the affirmative, so I guess his concerns were relayed to
27 you, and you answered positively.
28

1 With that, I have no further questions.

2 CHAIRMAN ROBERTI: Thank you, Senator.

3 SENATOR ELLIS: Move.

4 CHAIRMAN ROBERTI: Senator Ellis moves confirmation.

5 Secretary will call the roll.

6 SECRETARY WEBB: Senator Ellis.

7 SENATOR ELLIS: Aye.

8 SECRETARY WEBB: Senator Mello.

9 SENATOR MELLO: Aye.

10 SECRETARY WEBB: Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Senator Craven. Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 The vote is four to nothing; confirmation is recommended
15 to the Floor.

16 Congratulations.

17 (Applause.)

18 CHAIRMAN ROBERTI: I guess you deserved that round of
19 applause. You had to wait long enough.

20 (Thereupon legislative matters were
21 taken up by the Rules Committee.)

22 CHAIRMAN ROBERTI: Governor's Appointees, Meredith J.
23 Khachigian, Member of the Board of Regents of the University of
24 California.

25 Senator Bergeson.

26 SENATOR BERGESON: Mr. President, Members of the
27 Committee, I would like to take this opportunity to introduce to
28

1 you Meredith Khachigian, and I do this because I very strongly
2 support her appointment.

3 I have the opportunity and, indeed, the privilege of
4 knowing Meredith for a number of years, and I can attest to her
5 tremendous credibility as she applies herself to various tasks.
6 She's been very involved with efforts with the University of
7 California. She's been a strong supporter in their Alumni
8 Association. She's served on the Master Plan for Postsecondary
9 Education and did an outstanding job, and I know as I watched her
10 progress through that committee, she did her work with such
11 diligence and effort that has provided tremendous positive
12 results.

13 So I heartily ask for her appointment to be supported.
14 Thank you for this opportunity.

15 CHAIRMAN ROBERTI: Thank you very much, Senator.

16 Ms. Khachigian, we'll ask you what we ask all the
17 Governor's Appointees, that is why you feel you're qualified to
18 assume this position?

19 MS. KHACHIGIAN: Thank you, Mr. Chairman.

20 I feel that I've had certainly a lifelong interest in
21 education. I started with the University of California as a
22 teenager. I started first at a community college in Visalia,
23 California, and then went on to Berkeley and then to Santa
24 Barbara.

25 After graduating from Santa Barbara, after several moves
26 in my residence, I came back to California and then became very
27 involved in the Alumni Association there. I served on that board
28

1 for six years, and during that term served as president. And
2 then I was fortunate enough to be appointed by the Governor to
3 the Master Plan Commission and worked on that study of
4 Postsecondary Education in California for two-and-a-half years.
5 And then just recently, last July, I received this appointment to
6 the Regents.

7 CHAIRMAN ROBERTI: Thank you very much.

8 Are there any questions? Senator Petris.

9 SENATOR PETRIS: I have a few questions, Mr. Chairman,
10 which mostly go to broad policy rather you individually, but
11 you're going to have an important vote on this body.

12 First of all, I wanted to know what is the Board of
13 Directors of U.C. Santa Barbara?

14 MS. KHACHIGIAN: It's for the Alumni Association.

15 SENATOR PETRIS: The first area is the subject matter of
16 affirmative action. It's become a dirty word in some high places
17 in our country right now. I want to see how you see it in
18 determining policies at the University.

19 The Postsecondary Education Commission issued its report
20 last year to the Legislature, entitled, "Women and Minorities in
21 California Public Postsecondary Education." I don't know if
22 you're familiar with that.

23 One of the statements in the conclusions is as follows:

24 "The public postsecondary institutions
25 have each created programs for recruiting,
26 upgrading, promoting, and retaining women
27 and minority faculty members and staff.
28

1 Nonetheless, progress in enhancing di-
2 versification has been slow if evident
3 at all; and women, Blacks, and Hispanics
4 remain seriously underrepresented among
5 both faculty and administrators in all
6 three segments."

7 Now, first of all, are you familiar with that conclusion
8 of that Commission?

9 MS. KHACHIGIAN: Yes, uh-huh.

10 SENATOR PETRIS: Do you think the Regents ought to be
11 doing something more than is currently being done about that to
12 beef up the program, or intensify the recruiting, or whatever
13 needs to be done to help close the gap?

14 MS. KHACHIGIAN: I -- you know, the Regents are
15 certainly concerned with that. I think that there's always more
16 room for improvement, and this is something that I personally
17 have been very interested in.

18 I know there was a report by Joyce Justice as far as
19 women in the hierarchies of the University as far as being
20 promoted for professorships, tenure, and all of this, and I was
21 very interested in her report.

22 I think that there's always room, you know, for -- there
23 is certainly a gap between the women and minorities and --

24 SENATOR PETRIS: What do you think the University should
25 do?

26 MS. KHACHIGIAN: Well, I think as people are retiring,
27 and those positions open up, that they ought to be first choice
28 among all the candidates.

I also want the best person there for the job, and although highest consideration should be given to women and minorities, I want the best person in that job. And that consideration has to be foremost.

SENATOR PETRIS: Does that study indicate whether or not there are enough people qualified from those segments to assume those jobs?

MS. KHACHIGIAN: I'm not sure what that -- if it did come up whether there were enough people qualified. I don't think that there are ever enough people qualified.

Not that there -- it's just that people that are qualified don't always tend to select that position that we want them in. They might have other opportunities available and choose something else.

SENATOR PETRIS: Do you know if there's a waiting list, for example, for particular positions on the faculty that maybe women are particularly interested in?

MS. KHACHIGIAN: I'm not certain on that, no, because that's dealt with by the Academic Senate.

SENATOR PETRIS: You served on the Master Plan.

MS. KHACHIGIAN: Right.

SENATOR PETRIS: Did they have recommendations on this?

MS. KHACHIGIAN: Yes, certainly, for the very pro-affirmative action. And it is very important us, from the Master Plan standpoint, to have women and other minorities serve as mentors to students that are coming in. So we were very pro on that idea.

1 SENATOR PETRIS: Did they make any specific suggestions
2 for the University?

3 MS. KHACHIGIAN: Yes.

4 SENATOR PETRIS: Do you favor those?

5 MS. KHACHIGIAN: Oh, yes, certainly, of course.

6 SENATOR PETRIS: Do you remember what some of them are?

7 MS. KHACHIGIAN: Well, basically what we've been
8 discussing, to make sure that women and minorities are put in
9 these positions whenever possible, that they are given highest
10 consideration.

11 SENATOR PETRIS: From time to time the conflict of
12 interest question pops up which deals with faculty research, and
13 what the role of that faculty member is, and relationship to the
14 private business that often funds the research.

15 The Fair Political Practices Commission issued a report,
16 I believe it was last year, that says that the U.C. policy still
17 leaves unresolved some basic conflict of interest issues
18 involving members of the faculty. The report found that numerous
19 situations exist in which research may be privately funded and
20 faculty have a material interest with little or no requirement of
21 reporting.

22 Now, I haven't read that so I don't know the details. I
23 don't know whether it means the particular professor conducting
24 research may be a major shareholder in some company, or maybe
25 some other connection that gives at least the appearance of a
26 conflict.

1 Have any of these conflict problems come to you
2 attention as a Regent?

3 MS. KHACHIGIAN: They have not in the time that I have
4 been sitting with the Board of Regents.

5 I'm not saying that they won't, and they won't be
6 discussed, but they haven't been brought to my attention.

7 I am aware of the issue, of course.

8 SENATOR PETRIS: Do you have any notions about how we
9 can improve the situation or make whatever changes are needed to
10 reduce, if not totally avoid, conflicts?

11 MS. KHACHIGIAN: Well, I think that there has to be a
12 very complete and very adequate reporting procedure, and that I,
13 you know, I'm not in approval of anything that has that conflict
14 of interest situation. It just doesn't look right for the
15 University or for the professor doing the research.

16 SENATOR PETRIS: Do you know if the University has ever
17 rejected offers for funding of research because --

18 MS. KHACHIGIAN: I'm not aware of that, sir. I don't
19 know the answer to that.

20 SENATOR PETRIS: Thank you.

21 MS. KHACHIGIAN: Thank you.

22 SENATOR PETRIS: Thanks, Mr. Chairman.

23 CHAIRMAN ROBERTI: The FPPC recently came out with a
24 report, not on you but on the conflict of interest among faculty
25 in regard to research projects. And evidently there is no
26 requirement that when research projects are privately funded,
27 that the University or the faculty members who are involved in
28

1 this research have to declare a Statement of Economic Interest of
2 what their involvement would be.

3 What do you think an appropriate response would be by
4 the University to these kinds of conflicts?

5 MS. KHACHIGIAN: Well, as we were just discussing, I
6 think that in all matters of this situation that it's better for
7 the University to make sure that there is no conflict of interest
8 as far as the research is concerned. And it doesn't smack well
9 with the University to have things, you know, for personal gain
10 for anyone, and I would assume that we would go against that if
11 that would come up.

12 As I said, it just hasn't -- although I'm well aware of
13 the issue and have read about it, it hasn't come up while I've
14 been on the Board.

15 CHAIRMAN ROBERTI: So you don't know of any specific
16 cases that have come up where a faculty member has been brought
17 to the Board for this?

18 MS. KHACHIGIAN: No, no.

19 I would assume that would be more with the Academic
20 Senate.

21 CHAIRMAN ROBERTI: What is, just for my interest, the
22 jurisdiction, say, of the Academic Senate? Do they have
23 independent jurisdiction, or do they have jurisdiction based on
24 what the University gives them?

25 MS. KHACHIGIAN: They work together certainly, but some
26 of these issues on tenure and all of this kind of thing,
27 curriculum and all that, goes before the Senate rather than
28 before the Regents.

1 CHAIRMAN ROBERTI: If there were a tenure issue, for
2 example, I know it would go before the Academic Senate, but would
3 you have to approve, or would their decision be binding?

4 MS. KHACHIGIAN: No, it's theirs.

5 CHAIRMAN ROBERTI: Any other questions?

6 Hearing none, is there any opposition in the audience?

7 Then we're ready for a motion.

8 SENATOR ELLIS: So move.

9 CHAIRMAN ROBERTI: Senator Ellis moves confirmation be
10 recommended to the Floor.

11 Secretary will call the roll.

12 SECRETARY WEBB: Senator Ellis.

13 SENATOR ELLIS: Aye.

14 SECRETARY WEBB: Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY WEBB: Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven. Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote is four to nothing; confirmation is recommended
21 to the Floor.

22 MS. KHACHIGIAN: Thank you very much.

23 (Thereupon legislative matters were
24 taken up by the Rules Committee.)

25 CHAIRMAN ROBERTI: The next Governor's Appointee is
26 Valerie J. Reynoso, Deputy Director of the Employment Development
27 Department.
28

1 We'll ask you what we ask all the Governor's Appointees,
2 and that is why you feel you're qualified to assume this
3 position?

4 MS. REYNOSO: Certainly.

5 Mr. Chairman, Members of the Senate Rules Committee, my
6 eight years in State government experience includes coming up the
7 ranks, if you will, in the public information circles.

8 I started out as a student assistant. I've been a proof
9 reader, an assistant to a public information officer, a public
10 information officer myself, and now Deputy Director of
11 Communications for EDD.

12 Journalism has always been my first love. I studied
13 journalism and political science in high school and in college.
14 I've worked as a hostess for a public talk show. I've worked on
15 school newspapers.

16 I am proud to say that at EDD we do have an award
17 winning Communications team, and it's given me valuable
18 experience.

19 CHAIRMAN ROBERTI: Very good.

20 Any questions off Ms. Reynoso? Is there any opposition
21 in the audience?

22 I think you're going to get off easy.

23 SENATOR ELLIS: Move.

24 CHAIRMAN ROBERTI: Senator Ellis moves confirmation be
25 recommended to the Floor.

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Ellis.
28

1 SENATOR ELLIS: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven. Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 The vote is four to nothing; confirmation is recommended
9 to the Floor.

10 Congratulations.

11 (Thereupon this portion of the Senate
12 Rules Committee hearing was terminated
13 at approximately 2:28 P.M.)

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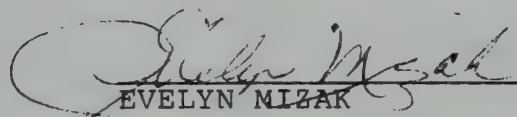
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

23rd day of March, 1988.


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27 Evelyn Mizak
28 Shorthand Reporter

1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR DAVID ROBERTI, Chairman

4 SENATOR HENRY MELLO

5 SENATOR NICHOLAS PETRIS

6 MEMBERS ABSENT

7 SENATOR WILLIAM CRAVEN, Vice Chairman

8 SENATOR JIM ELLIS

9 STAFF PRESENT

10 CLIFF BERG, Executive Officer

11 PAT WEBB, Committee Secretary

12 RICK ROLLENS, Consultant on Bill Referrals

13 NANCY MICHEL, Consultant on Appointments

14 ALSO PRESENT

15 NANCY EHLERS, Member
16 Youthful Offender Parole Board

17 SUSAN ALLEN OWENS, Member
18 State Board of Education

19 JACK PARNELL, Director
20 Department of Food and Agriculture

21 SALVADOR E. ALVAREZ, Associate Director
22 California Council of Churches

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Nancy Ehlers, Member of the Youthful Offender Parole Board.

Ms. Ehlers, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. EHLERS: Thank you, Senator Roberti.

This is the second California parole board on which I've served. Previously I served for two years on the Narcotic Addict Evaluation Authority, between March, '85 and April, '87. In that Board we conducted hearings at the California Rehabilitation Center to review institutional programs, the male and female civil addict commitments, and to determine parole readiness, granted or denied parole, and set parole conditions. We also issued oral orders of return to custody for parole violators upon telephone contact from State field parole agents. It was an excellent training position for my current work in the Youthful Offender Parole Board.

I feel the average California citizen has a mistaken idea of the characteristics of Youth Authority wards. These wards are extremely dangerous, criminally sophisticated young people, often without remorse and often with little motivation to change their criminal lifestyle.

As of the first of this year, 45½ percent of the Y.A. population had been convicted for homicide, robbery, assault, and

1 forceable rape; 49½ percent of the female wards had been
2 convicted of homicide, robbery, and assault; additionally, 3.4
3 percent of the females had been convicted of kidnap and/or
4 extortion.

5 I strongly support the efforts of the California Youth
6 Authority to attempt to break the cycle of criminality once the
7 young person is released into the community on parole. The Y.A.
8 has excellent programs to address academic educational needs,
9 vocational training, specialized counseling programs for sex
10 offenders, substance abusers, and individuals with severe
11 personality malfunctions. Intensive treatment programs are
12 equipped to deal with the severely emotionally disturbed. But as
13 in all behavior modification programs, they are only effective if
14 the individual is motivated to change his habits and his
15 behavior.

16 After a ward is committed to the Youth Authority and
17 diagnostic tests have been conducted at the Reception Center
18 clinics, the Youth Offender Parole Board conducts initial
19 hearings to determine treatment needs, recommend specific
20 institutional placement, and set a parole consideration date. We
21 also conduct annual review hearings to evaluate rehabilitation
22 programs progress. We conduct institutional disciplinary
23 sanction hearings, progress review hearings, and eventually
24 parole consideration hearings to determine parole readiness and
25 set conditions of parole.

26 If the parolee violates conditions of his parole, we
27 conduct violation disposition hearings in the local county jails
28

1 or juvenile halls. We establish guidelines for classification of
2 committing offenses to ensure consistence and fairness in the
3 treatment of the wards.

4 The work of a Member of the Youthful Offender Parole
5 Board is educational, it's challenging, and it's a serious
6 responsibility. I have served in this position for one year, and
7 I feel confident in my ability to carry out the charge of the
8 Board.

9 CHAIRMAN ROBERTI: Thank you very much.

10 Are there any questions?

11 What criteria do you use in identifying sentencing
12 guidelines?

13 MS. EHLERS: We have a seven category guideline that is
14 part of the Administrative Code.

15 CHAIRMAN ROBERTI: That's in the Administrative Code
16 right now?

17 MS. EHLERS: Yes. I guess -- what is the new word for
18 it -- regulations, or something, we have to learn? The
19 guidelines, code name.

20 We have these categories categorized by most serious
21 offenses, with Category One including murder first degree, murder
22 second degree, kidnap with death, kidnap with great bodily
23 injury, and on down to the petty theft-type things in Category
24 Seven.

25 CHAIRMAN ROBERTI: If you had to make a judgment as to
26 whether you thought some of the wards were spending too much
27 time, too little time, or just about right, a rough guesstimate
28 of everybody, what would your feeling be?

1 MS. EHLERS: Well, I think the guidelines are
2 satisfactory as they are for a single crime. But when you get a
3 ward before you who has kidnapped, raped, robbed and stabbed, and
4 has multiple priors, the single parole consideration date in the
5 guidelines at that time doesn't really address his treatment
6 needs.

7 CHAIRMAN ROBERTI: How would you recommend changing the
8 guidelines?

9 MS. EHLERS: Well, at that time we do have now, and this
10 works very well, the opportunity to refer that serious case to
11 full Board en banc where all seven Members of the Board meet once
12 a month in Sacramento and consider the most serious offenses.

13 CHAIRMAN ROBERTI: Senator Petris.

14 SENATOR PETRIS: I'm interested in what happens after
15 they come in with respect to rehabilitation and treatment.
16 There's a lot of pessimism floating around all the time: rehab
17 doesn't work, especially at that level. They seem to be more
18 resistant, I guess, than some of the older ones.

19 So, the questions I have have to do with how do you size
20 a young person up to determine whether they're eligible to go
21 into the certain programs that you have? What does the Board
22 look for?

23 MS. EHLERS: Well first of all, the Department has made
24 a determination whether they're amenable to treatment or not, and
25 that's been done at the clinic level by the professionals. By
26 the time to get to the Board, that decision has been made that
27 they are amenable to treatment.
28

1 That doesn't necessarily mean they're motivated to
2 change, but --

3 SENATOR PETRIS: They're just prospects, maybe?

4 MS. EHLERS: Right.

5 SENATOR PETRIS: And then, who makes the determination
6 of which program they're going to be assigned to? Is that done
7 through the counseling?

8 MS. EHLERS: Well, the staff of the Department does
9 recommend based on various diagnostic things what they feel
10 should be done.

11 In the area of substance abuse, for instance, we have a
12 substance abuse profile which the staff fills out, and after a
13 certain score they have to have a formalized substance abuse
14 program versus just substance abuse counseling.

15 However, these sheets are only as good as the truth of
16 the ward. If he has lied either direction, if he has minimized
17 his substance abuse use or his substance use, he'll have too low
18 a score. And in questioning him at his initial hearing, we may
19 find out that he has used a lot more than he -- and more
20 extensive than he reported at that time.

21 Also, strangely enough, we find it the other way. The
22 word gets out in the clinics that if you tell them you're a drug
23 addict, you can just be sent to a drug program and you'll get out
24 sooner. And that is not the case. And so, sometimes eventually,
25 when we see them we say, "We see your whole family were heroin
26 addicts, and you were a heroin addict," and they say, "Oh, none
27 of that is true. I just made that up."
28

1 But in talking to somebody, when you sit across the
2 table and talk to somebody for 15 minutes, and you have three
3 different Board Members talking to them from different angles,
4 you get a pretty good picture in judging a person.

5 SENATOR PETRIS: Now, you have various experimental
6 programs from time to time. The one going now that I know if and
7 am interested in is the Child-Parent --

8 MS. EHLERS: Yes, the Mother Infant Program.

9 SENATOR PETRIS: How does that work?

10 MS. EHLERS: It is just starting. We have our first
11 three wards assigned there, and I believe they were to be
12 transferred Monday from Ventura.

13 SENATOR PETRIS: So you really haven't got any --

14 MS. EHLERS: No, they haven't had a chance to prove
15 themselves yet.

16 SENATOR PETRIS: What is your impression, what is your
17 outlook?

18 MS. EHLERS: Well, I feel much better about it now than
19 I did initially. I had a great many questions, as other Board
20 Members did.

21 Since this is an in lieu of incarceration program, my
22 major concerns are public protection, and I'm sure they are yours
23 in your district.

24 Also, as the Allied Fellowship initially presented this
25 program to us, it was focused on parenting and motherhood,
26 nutrition, and bonding with the baby -- all of which are great.
27 However, I didn't feel that it had the addressing the criminal
28

1 lifestyle. The girl was not sent to the Y.A. because she was
2 pregnant; she was sent because she was a robber, you know,
3 whatever else.

4 So at this point now it is the agreement with the
5 Department that they are training the Allied Fellowship's staff
6 in addressing the concerns the Board would have by the time this
7 girl's considered for parole.

8 And also we were concerned whether the drug treatment
9 from there throughout the institute would have sufficient hours
10 and components to qualify for a formalized drug program in the
11 Youth Authority. So we have to --

12 SENATOR PETRIS: Are they under review now?

13 MS. EHLERS: Yes, and I think it's been established that
14 it will. The Department has been working with them so that it
15 will qualify, and we won't have to eliminate any girls who need
16 to go to a formalized drug program who happen to be pregnant. In
17 fact, I think one of these girls, her arrest, her committing
18 offense was driving under the influence of PCP, so she obviously
19 is going to have to have that.

20 There's some logistical programs that we haven't worked
21 out yet, you know: where we're going to have the parole hearing,
22 will it be on site there; will it be in the parole office in
23 Oakland; will we bring the girl back here to the clinic in
24 Sacramento; how we're going to handle the disciplinary things,
25 the DDMSs they're called in the institutions; you know,
26 everything.

27 But I think it's a viable experiment at this point.
28

1 SENATOR PETRIS: Will there be somebody from your shop
2 monitoring the program as it goes along?

3 MS. EHLERS: There is a female parole agent out of
4 Oakland who is going to be over there at least once a week, and
5 she will be presenting the cases to the Board. So, it'll kind of
6 be her special charge, but she is not on site at all times, no.

7 SENATOR PETRIS: Now, along the rehabilitation programs,
8 are there any that you think are really effective? And if not,
9 which ones come close to it?

10 MS. EHLERS: The most effective. Yes, I think there
11 are. They have some pilot programs in some of the institutions
12 that the wards seem to get a lot out of regarding anger and
13 aggression, for one thing; how to control their impulsive
14 behavior instead of just acting impulsively when they are angered
15 or mad or something like that.

16 SENATOR PETRIS: How's that done? Do people come in
17 from the outside?

18 MS. EHLERS: No, I think that's done with staff, staff
19 group counseling.

20 SENATOR PETRIS: You have group sessions and you act out
21 situations?

22 MS. EHLERS: Uh-huh, they have rational behavior
23 therapy. They have different modalities that they use in
24 different institutions in thinking -- getting them to try to
25 think before they act, you know, what's the consequences of this
26 action; is it worth it.

1 But I must say, you do find a lot of kids who are so
2 entrenched in the gang culture that they don't think beyond
3 standing up for the name, or whatever it is they claim, you know.
4 And murder is -- taking a life is of no import to them, whether
5 it's theirs or not. I mean, other members of their family have
6 been killed, and they're willing to be killed, and they kill
7 other people and it's no big deal.

8 SENATOR PETRIS: How in the world do we get out of that?

9 MS. EHLERS: If I had the answer to that --

10 SENATOR PETRIS: That's an awful lot of group sessions.

11 MS. EHLERS: But they eventually, some of the gang
12 members, it's amazing, are interested in having their tattoos
13 taken off and realize that it's going to -- in their
14 employability skills, counseling, which I think is also
15 effective, they learn that as long as they have these things on
16 their hands, they are never going to get a job as a waiter or a
17 busboy, or anything. They can't wear any kind of clothing that
18 covers up this that identifies them as a gang member. Some of
19 them are interested in getting those taken off. There are some
20 successes.

21 SENATOR PETRIS: That's all I have.

22 Thank you.

23 CHAIRMAN ROBERTI: Thank you very much, Senator Petris.

24 Any other questions? Is there any opposition in the
25 audience?

26 Seeing none, so I hear a motion?

27 SENATOR PETRIS: I move.
28

1 CHAIRMAN ROBERTI: Senator Petris moves confirmation of
2 Ms. Ehlers to the Floor do pass.

3 Secretary will call the roll.

4 SECRETARY WEBB: Senator Ellis. Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven. Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is three to nothing, all Democrats.

11 MS. EHLERS: I was pretty brave to come, don't you
12 think?

13 (Laughter.)

14 CHAIRMAN ROBERTI: Confirmation is recommended to the
15 Floor.

16 (Thereupon legislative matters were
17 taken up by the Rules Committee.)

18 CHAIRMAN ROBERTI: Susan Allen Owens, Member of the
19 State Board of Education.

20 MS. OWENS: Good afternoon.

21 CHAIRMAN ROBERTI: Ms. Owens, we'll ask you what we ask
22 all the Governor's Appointees, and that is why you are qualified
23 to assume this position?

24 MS. OWENS: Chairman Roberti, Senator Mello and Senator
25 Petris, my name is Susan Owens. And I suppose one reason why I'm
26 qualified to serve on the Commission is that I'm almost
27 two-thirds of the way through my term at this point, fairly well
28 accustomed to it.

1 But before that, there's several factors influencing my
2 move to apply for the position and then working for the almost
3 nine months of application processes.

4 I, first of all, although I've lived in California the
5 majority of my life, my parents are very strong liberal arts from
6 New England. And it's where I feel that there's more than
7 emphasis on education just in the community. It's more of an
8 area that just permeates the real importance of education. And
9 so I've been brought up with that very much in a part of my
10 family's life. I mean, we joke that I went through toilet
11 training saying, "If you don't learn how to do this right, you're
12 not going to get into the college of your choice." So, all along
13 education's been very important to me.

14 And so, working through, I was a very shy person in
15 elementary school and junior high school. And so during that
16 time, I -- instead of sitting by myself and being shy, I would
17 sit and watch other people. And I found it fascinating watching
18 interactions and how people worked with each other, and just
19 watching all the different kinds of people around the school,
20 because there is such in the microcosm of the world, seeing all
21 these different people.

22 And so during my -- I started getting involved at that
23 point with working on adult commissions and trying to present the
24 student thought in an adult voice; trying to work in with not
25 becoming as cantankerous, and, "Oh, here comes the student.
26 She's going to fight us all down." But just trying to present
27 another idea, and more often than not, agreeing with the adults
28 but just citing additional reasons why.

1 So, I was applying two years ago for just our local
2 district board -- no high aspirations at that point -- and got
3 the traditional, "No, you're too young to apply for this." And
4 I've heard that all my life. And as an offhand comment they
5 said, "But why don't you try for the State Board of Education?"
6 And --

7 CHAIRMAN ROBERTI: Then one day will come when you'll
8 stop hearing that.

9 (Laughter.)

10 MS. OWENS: Excuse me?

11 CHAIRMAN ROBERTI: I said one day will come when you'll
12 stop hearing "You're too young."

13 MS. OWENS: Oh, right. Seems like quite a ways off
14 still, but I'm sure that young at heart we all are.

15 Working through, and I was applying for another
16 scholarship and just was fascinated by this idea of working with
17 the adults and thought also that it was such a far off aspiration
18 that there's no possible way I would come close to ever getting
19 even in one of the lower levels of competition that I decided
20 that I would apply and just have good practice for college.

21 But we worked through the process, I was so impressed
22 with the people I was meeting, how much influences they were
23 having, and how important the student position could be. And I
24 was also a bit disappointed in that I didn't feel the student
25 member at that time was using their time and their position to
26 the maximum; you know, maximum utilization of their time and what
27 they could accomplish.

1 And so, it's just become a driving aspiration to become
2 working with the people. I've been very much pleased with what
3 I've been able to do.

4 CHAIRMAN ROBERTI: Very good.

5 In your biography, or your little biographical sketch we
6 have up here, it says that you do part-time tutoring?

7 MS. OWENS: Yes.

8 CHAIRMAN ROBERTI: What do you tutor?

9 MS. OWENS: It depends what the people need help in, I
10 suppose. I work especially in math and sciences.

11 It's interesting. I do well in all my languages, I
12 suppose, except English, so I'm working on that myself.

13 CHAIRMAN ROBERTI: What do you think we should do in
14 this State to encourage more dedication to education as a
15 priority in families?

16 MS. OWENS: Well unfortunately there's no quick, quick
17 way to do so. The big problem is, it's a part of our culture.

18 So, what I look at is in the long range plan. For
19 instance, anything that we do for education today, you won't
20 really see the effect for about 16 years from now, down the line,
21 just watching as the kids move through the system.

22 I think what's really important right now is working,
23 especially on the college levels or the postgraduate works, where
24 teachers are applying for their jobs, and work with them,
25 instilling in them the importance of their position. And as
26 well, in trying to instill from the teachers, and then working
27 with -- with students just to build that respect. And it won't
28

1 happen as much with the students now, but as they grow up and
2 have children, they will comment to their children on the
3 incredible influence that their teachers had on them. And as
4 they move up, you find -- you know, it's interesting to think of
5 how little of Californians are natives, but I think that there
6 really -- we can work with the children and just grow and expand.
7 And I can only see things getting better in that say.

8 Does that answer your question, sir?

9 CHAIRMAN ROBERTI: Good point.

10 Senator Petris, do you have any questions?

11 SENATOR PETRIS: Yes.

12 What is your college of your choice?

13 MS. OWENS: The college of my choice is Dartmouth, and
14 I've been accepted and I'm very excited about going there.

15 CHAIRMAN ROBERTI: You'll have to see Senator Kopp.

16 MS. OWENS: Yes.

17 CHAIRMAN ROBERTI: He never lets any of us forget that
18 that was where he went.

19 MS. OWENS: I've spoken with him, yes.

20 I was surprised, because I expected once I got on the
21 Board, I would be having a lot of pressure to go to a school
22 inside of California. And instead, it seems they were
23 continually directing me towards Harvard, which I couldn't quite
24 understand.

25 But I plan on going to Dartmouth, and spending four full
26 years there, being back to being a normal kid, a normal student,
27 and after that point coming back and, hopefully, getting involved
28 with education of the handicapped.

1 CHAIRMAN ROBERTI: Very good.

2 MS. OWENS: And I just also want to comment that I'd
3 like to present myself to you not as one of Ms. Ehlers' students,
4 but again, I'm the student Member for the State Board and not for
5 the Parole Board.

6 SENATOR PETRIS: Okay.

7 I have some other questions. The first one was kind of
8 personal on your own choices.

9 I notice you're into music well. You've got a lot of
10 interests, and the stage, you've acted in some plays?

11 MS. OWENS: Yes, sir.

12 SENATOR PETRIS: What's your favorite play?

13 MS. OWENS: I think anything with the music or any
14 musical is, but probably as a favorite play, not in which I
15 performed but which I've watched, my favorite one would be
16 "Children of a Lesser God." But any musical -- "West Side
17 Story", "Guys and Dolls." I was in "Hello, Dolly", "Oklahoma",
18 any musical I love. I suppose whatever one I'm working on at the
19 time is my favorite.

20 SENATOR PETRIS: Your high school has a high rating,
21 doesn't it, in statewide test scoring and all that?

22 MS. OWENS: Yes, it has.

23 SENATOR PETRIS: It's always had a very good reputation.
24 I guess that's influenced by Stanford and other institutions in
25 the area, and part of the atmosphere there. A lot of students
26 there have parents who are teachers at Stanford and elsewhere in
27 the peninsula?
28

1 MS. OWENS: Yes.

2 SENATOR PETRIS: What's your class size average down
3 there?

4 MS. OWENS: Well, to be honest, I can't give you a
5 factual number.

6 SENATOR PETRIS: Is it too many, or is it a small
7 number?

8 MS. OWENS: Well, I think anywhere across the State
9 right now there are -- it's too many. It's interesting, though,
10 because I'm not sure -- a big push has been made, and frequently
11 people say, "We need to reduce class sizes."

12 SENATOR PETRIS: Do you think that helps?

13 MS. OWENS: I think it would help, but I feel that
14 there's such -- looking at studies, you have to decrease it by
15 such a great amount that it -- and with outsized rooms and being
16 able to support financially. So for instance, if we made the
17 effort to just reduce it by one student, I'm sure how much of an
18 effect that would have on the class.

19 SENATOR PETRIS: How much --

20 MS. OWENS: But it would have an effect on the budget.

21 SENATOR PETRIS: How much should it be?

22 MS. OWENS: Excuse me?

23 SENATOR PETRIS: What should the reduction be? What
24 would you regard as an ideal class size?

25 MS. OWENS: Again, one thing to comment is that there's
26 such a high level of absences and tardiness that it's hard. You
27 have to figure in how the percentage of how many people will be
28 missing on a given day.

1 SENATOR PETRIS: Are you telling us, we're hearing all
2 this talk about class sizes going on and pointing to the large
3 numbers in California, the actual fact is that there are much
4 more likely to be less students on any given day because of --

5 MS. OWENS: Yes, I think that would be fair to say in
6 that there always are -- classes are enrolled to a certain level.
7 For instance, I believe that my school, there's -- teachers can't
8 have more than 30 students in a class. But there's always a few
9 students who are missing everyday.

10 Now, that doesn't mean that the teachers have less work,
11 because it's sometimes more difficult for them to catch their
12 students up.

13 But I would say, to answer your previous question about
14 class size, 20 would be -- 20-25 would be great to start with.

15 SENATOR PETRIS: Now, when you went on the Board, did
16 you come in with some thoughts of your own, some things that you
17 wanted to accomplish there, to see the Board do?

18 MS. OWENS: Well, everyone has their own plans.

19 One thing that I did is that, as soon as I made it to
20 the finalists level where there were three students left, I
21 started attending Board meetings so that I was used to the way --
22 this was back in February; my term didn't begin until August 1st
23 -- but I started attending just so I could become accustomed to
24 the way the Board proceeded, get used to the language so that I
25 could understand and cope. I knew that when I got in, I didn't
26 want to take a long time getting ready, but that I would be right
27 -- ready to go.

1 And one thing I also learned at that point was the
2 Board's policy. It's very hard -- as a student you think, "I'd
3 like to change this for my school," or, "I'd like to change this
4 in my school." And that's not as easy to do when you're dealing
5 with it at the State level.

6 So one thing I have done is, I've been working
7 extensively with a group called SABE, the Student Advisory Board
8 on Education, and forming student advisory groups across the
9 State so that students can help solve problems in their own area
10 because so many problems are individualized.

11 But then, and then I had aspersions [sic] for the Board,
12 yes, and my biggest one was just to present as well I could the
13 student voice. And I feel I did that.

14 SENATOR PETRIS: What is that voice saying?

15 MS. OWENS: Partially depends on who you talk to, but
16 there's many -- I mean, there's many different issues. There's
17 many things the students are concerned with.

18 One thing, a misconception I've noticed, is that adults
19 often think that students are complaining about how they don't
20 have -- you know, they're working too hard and they've got too
21 many requirements, and you know, complaining about how much they
22 do in school.

23 And I was very surprised, across the board I've done a
24 lot of traveling this year, and especially last summer. I spent
25 the entire summer going to different kinds of summer camps that I
26 could speak with as many different kinds of students as I could.
27 And one thing they were saying is that, "We're bored in school."
28

1 We want to work harder. We want to have more substance." And so
2 that's one thing I've especially been trying to help present this
3 year.

4 But there's many different student concerns. They want
5 to know more. They want to know more about AIDS. They want to
6 have more knowledge and more help in dealing with problems such
7 as drug and alcohol abuse problems. They want to have --

8 SENATOR PETRIS: Are we --

9 MS. OWENS: -- college counselors. Many, many, many
10 schools don't have any counselors at all, and the schools that
11 do, the students are just crying for advice on choosing a
12 college, which really determines one's future.

13 So there's many issues across the board.

14 SENATOR PETRIS: Now, I'm going to give you a pen that
15 I've been saving for you. It's a magic pen, and it has the power
16 to accomplish anything you want to accomplish.

17 Now, you're a member of the State Board, and if you
18 write the plans with this pen, they're going to happen
19 automatically for the ideal school system, statewide. Or, if you
20 want to say high school, the ideal high school. Money's not an
21 object.

22 Now, we have money to do what we need to do. All the
23 cries and complaints have their root in not enough money to
24 accomplish some wonderful program.

25 So, if you had such a magic pen which had the power to
26 put into reality your plans, how would you draw the plan for the
27 ideal school? I don't mean the whole detailed blueprint, but
28

1 what are the ingredients that you think the ideal school should
2 have?

3 SENATOR MELLO: Do you have an extra pen?

4 (Laughter.)

5 MS. OWENS: One thing that I would very much appreciate
6 would be to have a greater combination of industry and the
7 schools, especially -- one project, my pet project at home, is
8 working with the Technology Center of Silicon Valley, which is a
9 group sponsored by members of the Valley to provide services for
10 education. And I've just been amazed at what a difference that's
11 made in our area.

12 For instance, they've brought the new technology into
13 schools, and working not only just bringing it there and plopping
14 it down at the schools and say, "Okay, you've got it. Go to."
15 But they work with teacher institutes to train teachers how to
16 use it.

17 So often the Legislature or the State Board as well
18 comes up with ideas that we think would be very effective in
19 improving education, but when we bring it down we don't spend as
20 much time with helping the areas implement these ideas and become
21 accustomed to them and feel like it's a part of their own.

22 So, I would want to increase the amount of technology in
23 education. I think that's very important. I think that would
24 really help the dropout rate, one main concern, in that I know
25 many students -- traditionally you think of dropouts as the
26 students who are at the bottom of the class and that echelon.
27 And I've been amazed at the majority of students I know who have
28

1 dropped out of school are the real high, high achievers who have
2 found that they feel -- or they feel that they will learn more by
3 working and spending time in the marketplace than they will in
4 school at this point.

5 So I think that's a very sad comment that our schools
6 can't be keeping up enough to be teaching the students. And so,
7 bringing in some of that, for instance, that technology into the
8 schools, it really also helps the students with learning
9 disabilities, appealing to their own level.

10 I would increase the amount of actual curriculum. So
11 much of the school day is wasted on calling roll, and on -- when
12 the grass machine, you know, the grass cutter goes by the window
13 and students sit out, and they stare out, and they watch that.
14 And the teachers get a call, you know, a telephone, and so the
15 teachers leave the classroom. So much of the day is wasted.

16 I've been very surprised. This year on the State Board,
17 I perhaps am traveling three days a week. And I can get -- I
18 know that I'm going to -- sometimes we'll have trips when I'll be
19 gone that I haven't planned on, so I've been working ahead in my
20 class. And there's times when I come back to school and I'll be
21 a week or two ahead of what they're doing in the class because I
22 could teach it to myself at home, or get help from the teacher,
23 and do that in such a shorter amount of time because we're not
24 wasting the typical amount of time in class.

25 SENATOR PETRIS: Is that a universal problem around the
26 State?

27 MS. OWENS: Yes, I would think so.
28

1 SENATOR PETRIS: Have you discussed that at the State
2 Board level?

3 MS. OWENS: I'm not sure how -- I mean, we don't have
4 much defense at the State Board, and I'm not sure how you could
5 combat something like maximizing utilization of time. I mean,
6 how you teach people time management. I'm not --

7 SENATOR PETRIS: Although it's needed.

8 MS. OWENS: It's true. I mean, I know that I do a lot
9 more, I do a lot better at the things that I do if I'm busy when
10 I'm doing it.

11 SENATOR PETRIS: How about some time management training
12 for whom? For teachers and administrators? Principals? Who
13 needs the training?

14 MS. OWENS: Well, I think if they had higher
15 expectations of what they would have to get done, you know, I've
16 seen teachers who slack off because they know that they'll be
17 able to cover the amount that they need to before the end of the
18 year, and there should be more emphasis --

19 SENATOR PETRIS: You think that amount is too low.
20 That's what you mean by more curriculum?

21 MS. OWENS: Right, or more heavy-duty curriculum, not
22 just more of the basic facts, things that you could find out, but
23 more of the background story. I think you'd be more realistic --

24 SENATOR PETRIS: More depth.

25 MS. OWENS: Right, depth, definitely -- more realistic
26 with my magic pen, I would want to make sure that the money that
27 we do have to spend was being spent more wisely. And I hope that
28

1 the California Commission on Quality Education is a step in the
2 right direction in that effect because I think that there is a
3 lot of --

4 SENATOR PETRIS: Have you appeared before the
5 Commission?

6 MS. OWENS: No, I haven't. But I think that there is a
7 lot of money that is not being spent as well as it could be. So
8 I think that we can get a lot more bang for our buck, if you
9 will, with using some of their suggestions.

10 SENATOR PETRIS: Thank you very much.

11 I don't think you need the pen. I think I'll hang on to
12 it. Thank you.

13 CHAIRMAN ROBERTI: Senator Mello.

14 SENATOR MELLO: Thank you, Mr. Chairman.

15 Needless to say, I'm impressed with your answers and
16 responses and your goals, and I've been taking some notes here.

17 You say they waste a lot of time calling roll in
18 schools. Well the reason they do is, they get paid on an ADA
19 basis, average daily attendance. This is how the schools get
20 reimbursed by the State. If we could figure out a way to record
21 the students there without calling roll, we could probably save
22 some time.

23 MS. OWENS: Well, for instance, you can do that if a
24 teacher -- say you're in a math class, and the teacher's assigned
25 this work in teaching the assignment and leaves a little bit of
26 time at the end of class for students to get to work. Now,
27 during that time it would be very easy for a teacher to just look
28

1 up and sight who was in the class instead of taking five minutes
2 out of the beginning of the day to get everyone in, settled down,
3 and then go through the column.

4 SENATOR MELLO: I might point out, we call the roll here
5 in the Senate also to make sure that we have, first of all, 21
6 Members present at least for a quorum and so forth.

7 The second thing you said that I took a note of, you
8 said you wanted to return to being a normal student, you know,
9 when you're off the Board. I guess go back to being a normal
10 person.

11 I don't think you're a normal person, otherwise you
12 wouldn't be where you are. I always tell people that government
13 is not a spectator sport; you have to be on the playing field. I
14 think right now you're on the playing field, and I'd hate to see
15 you go to the sidelines.

16 MS. OWENS: I didn't mean it quite like that.

17 I suppose part of it is that I've been a bit outside of
18 normal in that, for instance, a friend asked me to go out to
19 lunch a few weeks ago. "Hey, I've got the car. Let's go to
20 Jack-in-the-Box." I said, "Well, I'd love to, but I'm sorry, I'm
21 flying down to Los Angeles and I've got a business lunch." You
22 know, that's not quite normal.

23 Another incident is that I get more mail in one day than
24 my friend who was gone all summer long. And you know, I like
25 that. I think I'm going to have withdrawal pains when my term
26 ends, but getting back to doing regular activities.

27

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1 But I'm afraid just by the way I am, there's no way that
2 I could get into something and then back out. Once I've become
3 involved with something, it's always a part of me.

4 SENATOR MELLO: Let me point out that we've had other
5 Members. You know, the Senate has the Constitutional obligation
6 and responsibility to confirm Members to the State Board of
7 Education.

8 Let me point out that a few Appointees ago, one woman,
9 not because she was a woman, but one person was rejected by the
10 Senate. And I'm sure you know who I'm speaking of because you
11 served with her. And along there with the whole Board, I think
12 the attitude, and I'm going to list a few programs, I'm hoping
13 that maybe you can provide some insight to them.

14 You mentioned industry and Silicon Valley, and you've
15 mentioned bringing more of the high tech, but if you look
16 statewide, we have some tremendous problems. The school dropout
17 rate is approaching 40 percent. We have the under-achievers that
18 aren't learning in school because of a variety of reasons.

19 The point I want to is bilingual education, which is the
20 law of the United States of America based on a Supreme Court
21 decision of Lau vs. Nichols. And now the State program has been
22 suspended because the bill was vetoed by the administration.

23 Most of the people on the School Board right now are
24 opponents of bilingual education. I think that based on the way
25 they've been voting in the last few years.

26 What is your perception of the need for bilingual
27 education, first of all, and then what have you done on the
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1 School Board to help articulate bilingual education, if in fact
2 you believe that it's needed?

3 MS. OWENS: Well, I definitely believe that there is
4 some -- I mean, there is a need to, when people are coming into
5 our country, teach them our language. That's obvious.

6 I should admit that I don't speak with a great deal of
7 experience on this issue. But the experience I have is speaking
8 with one of the girls, one of the people who applied for the
9 State Board position. And who knows, you may be speaking with
10 her a year from now. She was -- she's a person who moved or they
11 escaped from Cuba, came here, and had no -- had no English
12 background. It was completely new. And I was talking to her and
13 I said, "How did that affect you? Did you --" She was in a
14 program where instantly she was put in the English class and had
15 no help at all whatsoever. There was no aide who could speak her
16 language and it was just, you know, the word escapes my mind, but
17 just instantly she was put in the program and that was it.

18 And she said that although that was very difficult at
19 first, she feels that she learned English better because she had
20 the incentive to -- I mean, the incentive was more like a cattle
21 prod poking her along, but she had to learn the language. And
22 there was no way that she could just sit back and feel
23 comfortable in her own language.

24 I spent a week at a school near our area where students
25 have been -- take all their classes in their -- it's a very, very
26 much a school with people who are not primary English speakers.
27 And they take classes -- they take their math class; they take
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1 their history class, and all of their classes except for English
2 -- in their natural language, in their native language. And then
3 they come and they take English. And I was surprised to be
4 seeing the people that -- I talked with one person, or
5 falteringly talked with one person who's a senior, and who had
6 been in that school for six years, or had been in America for six
7 years but still was -- I mean, we had a very difficult time
8 carrying on a conversation because -- due to the fact that he had
9 all his classes in bilingual except for the English class. He
10 was able to get through and pass on except for that English class
11 and continue learning, but not learning in English.

12 So, that disturbed me. I also admit that I found it
13 difficult when I went into visit one of the math classes and I
14 had no idea what was going on because it was all taught in a
15 foreign language. And I thought how ironic it was that we work
16 so hard in my district, try so hard to take foreign language
17 classes, and it would have been -- or I was seeing how -- I was
18 joking with a friend once and having trouble in English classes,
19 and I went, "Oh, I wish I could just go to a foreign country so I
20 wouldn't have to take English." And they said, "Well, in foreign
21 countries you learn English, but if you go to one of the schools
22 down in another area, you can get away with not taking English."

23 SENATOR MELLO: I think you cited some individual cases.
24 But a recent study, though, put out by the Department of
25 Education show that those students who were in a bilingual class
26 and had limited or non-English speaking abilities were able to
27 turn the corner more quickly into English and achievement level
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1 because they understood the issue before them. I think the
2 evidence there is very positive that bilingual education has
3 worked to the benefit of the State.

4 Yet, it appears that the School Board, I'm interested in
5 knowing how you relate to the rest of the Board here, and whether
6 you speak out, or whether you go along with them as far as being
7 a strong voice for the need for bilingual education.

8 MS. OWENS: We haven't tackled bilingual education
9 really in my term on the Board. That hasn't been something that
10 we -- it's been an agenda item that we've brought up and we've
11 battled it out.

12 SENATOR MELLO: There was a vote taken on Speaker
13 Brown's bill that was to extend the sunset for bilingual
14 education. The vote was like 10-1 opposing the bill, or 10-0,
15 and there were a few abstentions.

16 MS. OWENS: I believe that was before I was on, because
17 the sunset happened before my term began.

18 SENATOR MELLO: I appreciate --

19 MS. OWENS: But I do -- I mean, I do speak up when I
20 disagree. I was a little bit intimidated coming in here today,
21 because last month Mr. Honig and I --

22 CHAIRMAN ROBERTI: I think you can hold your own quite
23 well.

24 MS. OWENS: Well, last month Mr. Honig and I had a
25 disagreement on an issue and I was wondering if he would be
26 joining us today.

27
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(Laughter.)

1
2 MS. OWENS: Yes, I will hold my own, but I will remain
3 respectful because I know that others come with more experience
4 than do I.

5 SENATOR MELLO: The last point I want to raise is one
6 that's a very agonizing issue that we're all coping with, and
7 that is the issue of AIDS and how we can penetrate by getting
8 more awareness and education to everyone in our society.
9 Certainly the schools are an area that we have to become better
10 informed on this tragic disease and hopefully it will minimize
11 its affect while we look for a cure or a vaccine in our
12 laboratories. We have to do something to increase the awareness
13 in education.

14 What do you think is happening there?

15 MS. OWENS: Well, I have very strong opinions about
16 that, in that I think, and this is one example where I think it's
17 especially important that we have a student member on the Board.
18 I know that, for instance, there's a very strong push, and I
19 understand and appreciate this for, you know, especially
20 advocating abstinence. And I do agree with that, but I think
21 that it's much more important to start working with students
22 younger.

23 For instance, I think that by the time you hit about 9th
24 grade, preaching abstinence is not going to have any effect with
25 students at school in and of itself. I know that there was one
26 bill last year as we were working with bills on AIDS, there was
27 one bill merely for an abstinence video. And I thought perhaps
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1 that would be a good idea for the younger students, but by the
2 time you hit the 9th grade, 10th grade, you have students who are
3 so rebellious and so curious that that's not going to have much
4 effect.

5 I mean, I do think in one way, perhaps this is bad to
6 say, but I think it's important to push the horror story of AIDS
7 and scare kids, because we are rebellious. We want to find
8 things out ourselves, but there's certain things -- I mean, not
9 many people want to know -- well, perhaps that's not right --

10 CHAIRMAN ROBERTI: Don't want to pay that high a price.

11 MS. OWENS: Yeah. I mean, you know, it's like most
12 people don't fool around and say, "Gee, I wonder what it would
13 feel like if I shot a bullet through my head." You know, it's
14 not the kind of thing you want want to -- "Well, what are you
15 doing after school today," you know.

16 So, I think that it's important to push that, but to
17 start with students even very young in respecting yourself, you
18 know. Starting with the very basic things like you respect
19 yourself, and you don't let people do things you don't want to
20 do. And then, you know, there's certain ways to be healthy, and
21 what are ways to be healthy, and moving on, you know. This is
22 just one more way to be healthy, and it's not something you going
23 to live through.

24 SENATOR MELLO: But do you think we could do more as far
25 as getting more education in our schools? How can we reach those
26 students with the awareness issue as it pertains to AIDS?

27
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1 MS. OWENS: Well, people really are aware of this. I
2 mean, I don't think there are many people who don't know what it
3 is.

4 I was -- we went through an AIDS education program in my
5 own district, and so I was spending some time there. A lot of
6 questions on people's minds. They really -- they want to know.

7 I don't think that, you know, a one-shot video, for
8 instance, is going to do it because you have kids who aren't in
9 school, and kids who are really more interested in thinking,
10 "Well, I wonder what my boyfriend's going to say to me after
11 school," "Do I look cute or not," you know. You have people who
12 miss it.

13 But I think it's really important to get down and to get
14 deep into what can happen and spread that out over time.

15 I'm not sure that it's necessary to have, for instance,
16 a whole new course just on AIDS, because it really relates to so
17 many other problems that we have out there, but it's because of
18 political reasons we're not willing to touch.

19 SENATOR MELLO: All right, thank you very much.

20 CHAIRMAN ROBERTI: Is there any opposition in the
21 audience?

22 I don't see any. Do I hear a motion?

23 SENATOR PETRIS: Move.

24 CHAIRMAN ROBERTI: Senator Petris moves confirmation be
25 recommended to the Floor.

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Ellis. Senator Mello.
28

1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Senator Craven. Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote is three to nothing; confirmation is
7 recommended to the Floor.

8 MS. OWENS: Thank you.

9 CHAIRMAN ROBERTI: Congratulations.

10 The next one is Mr. Jack Parnell, Director of the
11 Department of Food and Agriculture.

12 SENATOR MELLO: Mr. Chairman, I think you ought to
13 repeat what you said earlier about three Democrats being here.

14 CHAIRMAN ROBERTI: Yes, will you please tell the man in
15 the corner office that there's three Democrats here today.

16 (Laughter.)

17 MR. PARNELL: I'll share that with him, Senator.

18 CHAIRMAN ROBERTI: Let's see, we've had you before under
19 controversial circumstances in other positions.

20 We'll ask you the same thing we asked in your prior
21 appointment, and that is why you feel you're qualified to assume
22 this position?

23 MR. PARNELL: Senator, my background, as you know, is as
24 a businessman spanning many years, and in banking, in the
25 restaurant business, and in other related business activities.

26 I think by and large the demands that are placed on a
27 director of a department as large and as intricate as the
28

1 Department of Food and Agriculture, by and large, require that we
2 have a management ability. And certainly I think I bring that
3 management ability to the Department of Food and Agriculture.

4 I think that was demonstrated in my tenure as the
5 Director of the Department of Fish and Game, and we tried to
6 execute our responsibilities there in a judicious way. And I
7 think that we left the Department certainly with a department
8 that was substantially changed, and hopefully, I think most would
9 agree, changed for the better.

10 I think the period of time that I spent at the
11 Department of Fish and Game allowed me the opportunity to really
12 focus for four years on environmental issues, which is the prime
13 focus of many of the decisions that are made there. And I think
14 that, too, positions a person as far as mind set in a good way to
15 be able to meet the responsibilities of Food and Agriculture.

16 So, I look forward to continuing in that capacity.
17 Certainly I have a vast background, spanning clear back to my
18 childhood in agriculture itself, from tree fruit to cattle
19 operations. We have an extensive farming operation currently,
20 continue to have. And I so I think with all of that blended
21 together, it certainly qualifies me to serve as this Department's
22 Director.

23 CHAIRMAN ROBERTI: Thank you, Mr. Parnell.

24 Are there any questions? Senator Mello.

25 SENATOR MELLO: Mr. Chairman, I don't think we can let
26 him off the hook without some tough questions.
27
28

1 First I want to introduce Mrs. Parnell who's here
2 helping him along. We appreciate her coming down to give you
3 some moral support.

4 Jack, one of the things I wanted to do is to praise your
5 efforts as far as reaching out into other countries, especially
6 the Pacific Rim, and trying to get California agriculture
7 products more readily acceptable in other countries.

8 To balance that out, and I'm talking about a level
9 playing field, I think if we could somehow, you hope, help
10 monitor. I know we can't stop the products from coming in here
11 to California. You and I talked about your annual report that
12 was put out to show that California is exporting a lot of
13 agriculture products throughout the world, mainly to our
14 neighbors on the Pacific Rim.

15 But last year, we got one million shipments of
16 agriculture products in the United States, and about 150,000 of
17 them came into California. And this borders on a federal issue,
18 but there's several things that are happening. One is the tariff
19 situation that they impose on us, and then our tariffs are very
20 low compared to theirs. That's hurting our trade.

21 The other item is the fact that we are not inspecting
22 these products as they come across the border as it pertains to
23 quality and insecticides and pesticides. And a lot of the
24 products coming in here are very inferior, and they, in some
25 case, far exceed our own standards for pesticides.

26 What can the State do, if anything? It seems like we
27 could protect the people of California from not having to be
28

1 exposed to all these pesticides that we do not allow the American
2 farmer to use -- not the American, but the California farmer to
3 use. Yet, we're being flooded by products that are inferior from
4 Guatemala, Mexico, Chile, Peru, and many other countries.

5 MR. PARNELL: Senator, that's a question that's been
6 asked many times, and certainly the concern is wide spread.

7 Certainly what we're seeking to do is to seek and find
8 methods whereby we can trade in an equitable, fair manner.

9 The imports to this country have been a problem
10 expressed to me by a number of people. When we first came back
11 to the Department in June of this past year, one of the first
12 things we did is look at that issue. And there has been a
13 three-fold increase in the State's involvement in the border
14 station inspection to insure that samples are taken when a
15 product enters this country.

16 In addition to that, we've done something that's unique,
17 and that is coordinated our efforts with the federal government
18 so as to make sure that the inspection that the federal
19 government carries out is done at a time and a place so as not to
20 be duplicative.

21 We feel, based on the record as we know it today, the
22 samples that have been taken, Senator, seem to indicate that many
23 of the crops that are imported to this country are actually grown
24 and imported specifically for this market, are grown for this
25 market. And we're finding that through that expanded inspection
26 and analysis of those crops that there is very little difference
27 in those coming across our borders and those domestically grown.
28

1 That is to say, very infrequently do we find pesticide residues
2 that are above tolerances.

3 I would continue to say that this is a focus of great
4 concern to us, and to the extent that we need to, we'll be
5 dedicated to trying to do whatever is necessary to ensure.

6 It's a little difficult when I go abroad and talk about
7 free trade to immediately say that we want to be free traders,
8 but only one way. So we have to find ways to ensure that we are
9 on a level playing field, and that certainly was my motivation
10 borne out of a conversation we had with you earlier.

11 SENATOR MELLO: See, the thing that I've come to know is
12 that the federal inspection stations are open only five days a
13 week and eight hours a day. So what happens is, these trucks,
14 especially on truck shipments coming out of our borders, those
15 drivers know what time the inspection station closes, or what day
16 it closes, and they just lay over for a few hours or so, and then
17 they come driving through.

18 It's a different agency of government that looks at
19 whether or not they have a Green Card, or ability to come into
20 the country. But the USDA inspection is totally lacking.

21 I was just wondering whether we can supplement that, or
22 whether we can inspect products like in the Los Angeles market or
23 other areas that are imported that they find this high degree of
24 residue, which I've heard is excessive in many cases.

25 MR. PARNELL: And I've heard the same kinds of things,
26 and that's what prompted us to do -- re-examine the whole issue.
27 We have done some Port of Entry inspection. We are doing some
28

1 destination inspection, and hopefully we'll get a handle on
2 whether or not that is a valid concern.

3 SENATOR MELLO: Thank you.

4 CHAIRMAN ROBERTI: Thank you.

5 Senator Petris.

6 SENATOR PETRIS: Welcome back.

7 MR. PARNELL: Yes, Senator, thank you.

8 SENATOR PETRIS: I have some areas that I want to go
9 into also.

10 First of all, my first love, which is agricultural
11 pesticides as they relate to protection of the workers. I guess
12 I want to know how the posting program is going?

13 MR. PARNELL: Ironically, I knew when I was asked to
14 serve that I would be sitting here one day, Senator, and the
15 first question I asked, and a very serious request, was as to how
16 the posting program was working.

17 We're led to believe that in our Department, you in the
18 Legislature provided us with laws that will allow us to post
19 those fields that are necessary, and to also allow some
20 flexibility on the county's part as the need indicates to do
21 additional posting.

22 I was not here for the debates early on as your posting
23 bill went through the Legislature --

24 SENATOR PETRIS: Well, it was very, very spirited, that
25 debate, to put it mildly, I guess.

26 But as a result of the opposition, we did put more and
27 more duties on the Department. The Department chooses, for
28 example, which crops.

1 MR. PARNELL: That's correct.

2 SENATOR PETRIS: Which are the labor-intensive crops,
3 where the greatest exposure to workers occurs.

4 I suppose we'll be getting periodic reports and all, but
5 I just wondered if there's any particular problem pending right
6 now that has been called to your attention relating to the
7 posting?

8 MR. PARNELL: My impression from staff is that the
9 posting program as it's currently constructed is working very
10 well. You will be getting reports from time to time. My
11 impression is that it is working well, and as in all cases from
12 time to time there may be frailties in that system that I'm not
13 aware. Certainly at this point, it's my belief that it is
14 working well and it's adequate.

15 SENATOR PETRIS: I'm impressed with the fact that that
16 was your first question when you went in there. It indicates an
17 interest on your part to seeing that it's done. I assume that
18 the program is.

19 MR. PARNELL: Yes, sir.

20 SENATOR PETRIS: Your Department has something to do
21 with the Trade Offices abroad?

22 MR. PARNELL: Yes, we do, Senator.

23 SENATOR PETRIS: Exports?

24 MR. PARNELL: We really don't have a lot to do with the
25 Trade Offices. Those are the responsibility of the Governor's
26 Office, the World Trade Commission. We do have a presence in the
27 export world of exporting agricultural products.
28

1 SENATOR PETRIS: Do you have a contact there? Do you
2 have any reading on how those are going?

3 MR. PARNELL: We are in contact. In fact, I was just in
4 Japan and in Korea, and a brief visit to Hong Kong and Taiwan.
5 We were accompanied by the staff of the Governor's Trade Office
6 in Tokyo.

7 Our impression is that it's working very well.

8 SENATOR PETRIS: Are they starting to open up some
9 markets there for us?

10 MR. PARNELL: I think they're working on markets,
11 particularly trade, in the industrial sector and in reverse
12 investment, and are certainly being very helpful in terms of what
13 we're trying to do agriculturally.

14 SENATOR PETRIS: From the agricultural standpoint, are
15 you looking at other countries where the establishment of such an
16 office would be beneficial to California?

17 MR. PARNELL: As you're aware, there's a Trade Office in
18 Tokyo now and one in London.

19 SENATOR PETRIS: Yes.

20 MR. PARNELL: And it's my impression that the Governor
21 announced this year that he was very interested in looking at
22 Mexico.

23 SENATOR PETRIS: I'm aware of that.

24 MR. PARNELL: That hasn't been solidified as to the
25 exact date, time, or plan of action.

26 SENATOR PETRIS: I've been urging that for some time; in
27 fact I had a bill on that which didn't make it. He wasn't ready
28 at that time.

1 We have a couple other areas I want to touch on. One is
2 Prop. 65.

3 MR. PARNELL: Yes.

4 SENATOR PETRIS: Now as I understand it, there's a lot
5 of controversy around Prop. 65. Those of us who supported it
6 very strongly have the feeling that the administration has been
7 very slow in carrying out the law.

8 The standards, for example, are about one-tenth, unless
9 I'm mistaken. The standards that have been placed in the
10 administration of the law with respect to the risks are only
11 about a tenth of what the law provides. I want to get the
12 wording right here because I would like to get your reaction to
13 what appears to me to be a rather significant policy area that
14 needs attention.

15 MR. PARNELL: Are you referring, Senator, to the
16 thousand-fold safety factor?

17 SENATOR PETRIS: Yes, a thousand versus a hundred. The
18 factor in the statute is a thousand, and the Department's
19 standard is a hundred.

20 MR. PARNELL: Not for the purposes of Proposition 65.
21 The Department is in fact enforcing in the implementation of
22 Proposition 65 the thousand-fold safety factor.

23 And you recall that Proposition 65 deals with the issue
24 of warning and of discharge. And as to those two issues, and as
25 they relate to Proposition 65, we are enforcing the thousand-fold
26 safety factor.

1 Science has it that one -- that under analysis, the
2 thousand-fold safety factor may not be the best science, and in
3 other areas, we may use a factor other than the thousand-fold and
4 try to stay in tune with what is the best scientific information
5 available.

6 But as for the purposes of implementation of 65, we
7 definitely are using the thousand-fold safety factor.

8 SENATOR PETRIS: Well then, the information I get is in
9 error, I'm happy to say, because the allegations that I have here
10 that have been developed for the purpose of going into this
11 indicate just the opposite. It says:

12 "The initiative defined significant
13 risk of exposures ..."

14 and we're talking about cancer causing substances,

15 "... to reproductive toxicants as
16 1,000 times the level in question.

17 The Department's level is 100 times."

18 Now, I don't know enough about the chemistry of this to
19 be able to define it for you more clearly, but if you tell me
20 that the Department is enforcing it at the level required by the
21 statute, that's fine.

22 MR. PARNELL: We are, as to Proposition 65, utilizing --
23 and there could be a misunderstanding, and I'd be happy to try to
24 correct that misunderstanding if that does exist -- but as to
25 Proposition 65, we are definitely adhering to the thousand-fold
26 safety factor. That is to the warning and to the discharge which
27 is spoken to in the proposition.
28

1 SENATOR PETRIS: Now, on another piece of legislation
2 earlier, enacted by the Legislature rather than the people, AB
3 2021, the Pesticide Contamination Prevention Act, I understand
4 that 45 contaminants have been identified as contributing to the
5 problems that we have in this State, but only five have been
6 reviewed so far.

7 Can you tell us why there's such a small number?

8 MR. PARNELL: It was put into place a Scientific Review
9 Panel made up of the Water Board, the Health Services and the
10 Department of Food and Agriculture. We're handling those in an
11 expeditious fashion as soon as they go through that scientific
12 review and are presented to us.

13 AB 2021 was a two-pronged program that definitely we're
14 very concerned with, and we share everyone's concern as to
15 residues of chemical in groundwater. And we're moving as quickly
16 as we can, Senator, to make sure that all of those chemicals are
17 reviewed and appropriate action is taken.

18 SENATOR PETRIS: Now, in the McFarland area, we've been
19 devoting a lot of attention to that on the legislative side,
20 Senator Torres' Toxics Committee and others. And there seems to
21 be a major difference of opinion here. The tests and review done
22 indicates there's no correlation between the high level of
23 illness and so forth, cancer clusters as they're called, of
24 people living in that community, especially children, and the
25 contamination and so forth. They don't find a correlation.

26 But the charge has been made that the Department, or the
27 people who were assigned that study, really didn't have enough
28 information about the various substances.

1 Have you heard that?

2 MR. PARNELL: Well, I've heard that there's a diverse
3 point of view as to what's taking place in McFarland.

4 It was a panel that was constituted, made up of members
5 of Health Services. They've been primarily in charge of that
6 investigation.

7 My information to date has it that there is nothing
8 conclusive that has been determined thus far.

9 Now, rest assured that if we ever get to the point that
10 it can be proven that agriculture chemicals or chemicals of any
11 sort, and I have any jurisdiction in the decision, certainly I
12 won't hesitate to take appropriate action at the time.

13 SENATOR PETRIS: Well, is it too early, then, to expect
14 more than the number we've had?

15 MR. PARNELL: As far as I have been informed, Senator,
16 we're moving as expeditiously as we possibly can. Now, I will
17 certainly ask the question, if there have been any impediments in
18 that system, and try to correct them if that's deemed necessary.

19 To date, I think we've been moving as expeditiously as
20 possible.

21 SENATOR PETRIS: I just have two other subjects. One is
22 labor relations.

23 I asked some questions of a recent nominee to the Racing
24 Board. It has to do with one of the State Fair or rather County
25 Fair Board's policy relating to employment of people after the
26 adoption of the satellite wagering system under Ken Maddy's bill.
27 Senator Maddy had a provision in that bill that requires the
28

1 local board that runs this racing season to continue to deal with
2 and recognize the same union that has been in place representing
3 those employees prior to the satellite thing coming in.

4 One of the boards hasn't done that. Now, the answer I
5 got from the Racing Board Member was that, well, they are having
6 some meetings, and they're going to work it out. He felt
7 optimistic.

8 The latest word I have now is they still haven't worked
9 it out.

10 I think your Department plays a role in that because you
11 have jurisdiction over the State fairs. Number one, I'd like to
12 see you do something about seeing to it that the local county
13 fair, or district, whatever it is, that runs the races in that
14 area complies with the law. It took a lot of doing to get that
15 thing in place. Senator Maddy accepted it, and it's in the law.

16 But I don't like to see a law that's just ignored where
17 it affects the livelihood of people and is not going to hurt, you
18 know, the local board. It's just going to continue to negotiate
19 and deal with somebody that's in place. We're not requiring them
20 to start something new, or bring in an entirely new body and
21 foist it on them. You know, it still goes through the normal
22 process.

23 Now, have you been informed about this? Are you getting
24 into it in any way?

25 MR. PARNELL: Yes, I have been informed about it. In
26 fact, we -- the implementation of the new satellite wagering
27 facilities as was brought about by the implementation of SB 14 is
28 something that we've been closely monitoring.

1 There has been a point of controversy. When our staff
2 read the language in the bill, on the surface it appeared to be
3 clear. There were others who thought that it was unclear for a
4 variety of reasons that I won't attempt here to quote the exact
5 language, I don't think I can do that.

6 When the question was raised, we decided that it was of
7 sufficient magnitude to elevate it to the Attorney General's
8 Office and ask them to provide us with an opinion.

9 Now, my understanding as of last night -- I had hoped
10 that the opinion would be forthcoming today, I didn't receive it
11 -- but we certainly will be guided by the interpretation of the
12 Attorney General on the issue, and we're willing to take whatever
13 steps necessary to bring, if necessary, into conformance with the
14 language of the law.

15 SENATOR PETRIS: I would urge you to do that. It's not
16 easy to get these laws enacted in the first place, and to get it
17 to where people will agree, and especially where it's done after
18 long hours of discussion and negotiation on different sides in
19 the legislative process. Then they all agree, and they say,
20 "Okay, we're going to go with this." Then to have it ignored, I
21 think it's very unfortunate.

22 Now, another area is in pesticide registration and the
23 State's role. Now, some of that is in Health, but you do it in
24 cooperation with Health and so forth.

25 You have a bunch of scientists. One of the reasons used
26 for opposing some of my legislation in that field was that we
27 don't have the people. We don't have enough scientists to do the
28

1 overseeing and to do the actual testing when it's necessary, and
2 to verify and confirm the protocols and the method of testing
3 that private people use, and so on and so forth. They said they
4 were going to go out and hire more people, and they've done that
5 since.

6 My question is, is there a policy in the Department with
7 respect to people who are assigned to those kinds of jobs on
8 conflict of interest, for example?

9 Suppose you have a chemist that has worked in some
10 private lab for a long time. Maybe he's worked for the
11 manufacturer of pesticides. Now, he leaves that manufacturer and
12 he comes to the State, and he's assigned a job of enforcing
13 through monitoring the process, and so forth -- he's part of the
14 enforcement arm -- products of that same company.

15 Is there a policy there to try and flush out a possible
16 conflict?

17 Now I know that some people who leave the company might
18 be the best ones to monitor, because maybe they left because of a
19 dispute over company policy, saying, "Hey, you shouldn't market
20 this." So they're invited to leave, and then they go to the
21 State. They'd be great.

22 But if they are in effect agents of that company,
23 whether they consciously -- I don't mean to say they might go in
24 there consciously with that purpose in mind, but they may have
25 been trained by that company; they may have been working for them
26 for a long time, so they may tend to think the same way that
27 company thinks rather than looking at it from a new perspective.
28

1 So there is a potential conflict. Now, I'm not sitting
2 here to tell you that I've discovered a lot of conflicts. I just
3 want to know what the policy is to try to prevent that from even
4 coming up?

5 MR. PARNELL: There certainly is a policy on my part,
6 and I can't tell you that there's a written policy because, quite
7 frankly, I don't know whether there is or isn't.

8 But it's always been my philosophy in management of
9 these kinds of technically disturbing areas, where an
10 interpretation on way or the other may be compelling, we
11 certainly are of the belief that if there's any reason to believe
12 that there is a conflict, or even an appearance of a conflict, we
13 would certainly seek to handle that judiciously and take
14 appropriate action.

15 We hire our scientists from the same places that all of
16 the other scientific community come from. Our toxicologists come
17 from the very best medical schools across California. And we try
18 to, and we're very proud of the fact that we now have on staff
19 very, very competent, and I think referring back to comments that
20 were made by EPA and other heads of federal agencies who deal in
21 these kinds of issues, very complimentary of our Department now
22 in the degree of expertise that's there.

23 But as to the conflict issue, Senator, rest assured that
24 if it's ever discovered by me or pointed out by anyone that there
25 is even an appearance, we'd take appropriate action.

26 SENATOR PETRIS: Well, that's fine. I will have to add
27 that I've had similar comments from independent outside sources
28

1 that praise some of the scientists that they happen to know
2 directly and have had some contact with.

3 I've asked, for example, about specific reports: what
4 about this report, and what about its level of expertise, and
5 competence, and objectivity? And I've had some very high marks.

6 So I'm not bringing this up because I happen to know
7 something that's going on. If I had, I would have called you and
8 told you.

9 MR. PARNELL: I appreciate that.

10 SENATOR PETRIS: But it's good to be on guard. The same
11 is true of contracts. Instead of an employee, an independent
12 contractor, where a chemist is brought in because you don't have
13 the expertise in that field. You bring him in by contract,
14 consultant's contracts, you know, all kinds. All the agencies
15 have those.

16 So it was just a reinforcement by me of your own policy
17 of vigilance, I guess.

18 MR. PARNELL: There's certainly no lack of resolve on
19 my part.

20 SENATOR PETRIS: Thank you.

21 Thank you, Mr. Chairman.

22 MR. PARNELL: Thank you, Mr. Petris.

23 SENATOR MELLO: You got off easy, Jack, I'm telling you.

24 MR. PARNELL: Well, the Senator isn't finished yet.

25 (Laughter.)

26 SENATOR MELLO: He's eating raisins. If it wasn't for
27 farming, there would be no raisins around.

1 CHAIRMAN ROBERTI: Well, I would like to get one point a
2 little bit clarified, because Senator Maddy's bill was highly
3 controversial, and it took forever to pass.

4 The major dispute was over union representation. And I
5 do feel that the 22nd District Agricultural Association, or Del
6 Mar, whatever we call it, is contravening the spirit of the law.

7 So, I would like some feeling of assurance that you will
8 withdraw permission for satellite wagering as long as they refuse
9 to follow the union representation compliance.

10 MR. PARNELL: Senator, we've asked for the Attorney
11 General's advice. And certainly, I think we both believe that
12 it's appropriate for me to wait for that advice.

13 But upon receiving it, you can rest assured that
14 there'll be no lack of resolve on my part to make sure that any
15 authority vested in me will be used to bring everyone into
16 compliance.

17 CHAIRMAN ROBERTI: That's fair enough.

18 Is there any opposition in the audience? Please come
19 forward.

20 MR. ALVAREZ: Mr. Chairman, my name is Sal Alvarez. I'm
21 the Associate Director for the California Council of Churches
22 which represents the mainline Protestant denominations in
23 California. It's affiliated with the National Council of
24 Churches.

25 In addition to that, I'm on the National Farmworker
26 Ministry Board, and I'm representing the National Association of
27 Hispanic Priests, Deacons, and Religious Brothers in the United
28

1 States as Executive Secretary, which is affiliated with the
2 United States Catholic Conference. So, I'm representing a broad
3 base group of Catholic and Protestant religious organizations.

4 We come with four principle concerns: one having to do
5 with the field of and the record with respect to pesticides; the
6 question of water; the question of the Department's position on
7 the ALRB; and lastly, the question of pushing a policy of guest
8 workers and braceros for California.

9 Let me begin first with the question of pesticides. As
10 you know, Senator Art Torres went into the Valley with us last
11 year at the request of the National Farmworker Ministry and
12 certainly the farm community to investigate the McFarland cancer
13 cluster of young kids who were -- have died of pesticide use.
14 Senator Petris is well aware of this.

15 We consider, within the church community of California,
16 and certainly out of California, in Washington, D.C., that this
17 is a major catastrophe that's happening in California. The death
18 of children in rural areas seemingly because of either excessive
19 water contamination of pesticides or something associated with
20 that.

21 We have been involved in requesting expeditious review
22 of that matter, and it's not been forthcoming by either the
23 Department of Health or with any real concern from the Department
24 of Food and Agriculture. We would question what the Director
25 plans to do with respect to responding to this crisis?

26 We're concerned that his Department has taken an active
27 position against the posting bill, which we found outrageous.

28

1 That even the most minimal of protections for workers in the
2 field, posting just signs in the fields saying that a field has
3 been sprayed, that this Department's leadership has opposed the
4 bill and has gone to the Governor urging a veto.

5 I personally have talked to Julio Calderon, who's
6 assigned by this present Director to monitor pesticides and be a
7 liaison in that, and he laughs. He thinks it's a joke.

8 We don't think it's a joke at all that the spokesperson
9 for the Department of Food and Agriculture, Julio Calderon,
10 thinks it's funny that we would even request that the Department
11 support Senator Petris' posting bill.

12 The religious communities are outraged. We just
13 recently had a legislative conference here of 150 church leaders
14 throughout Northern California, and just real dismayed that this
15 is going on in this State, which is as progressive as it is.

16 We're concerned about the Department's opposition to
17 laboratories testing pesticides. There's the Raley's case that's
18 come before the Committee and other committees. There are
19 laboratories out there that are doing testing. The Department
20 has a policy of pushing legislation that would restrict the
21 laboratories to be registered and regulated by the Department of
22 Food and Agriculture. And our position has been that this is the
23 fox watching the kitchen -- the chicken coop, as the term has
24 been used in this very room.

25 So, it's that type of leadership in the area of
26 pesticides.

1 We're concerned on a more global area that California's
2 taken the lead in the use of more pesticides. I just recently
3 returned from a national conference for Hispanics in Israel. I
4 was there for three weeks. We were given a tour of the State of
5 Israel the last two weeks. We went to the Dead Sea where they
6 are mining the Dead Sea for pesticides.

7 Israel will be by far the largest producer of pesticides
8 in the world. They are already shipping into Third World
9 countries, like Mexico and Central America and Latin America,
10 vast amounts of pesticides. The National Farmworker Ministry is
11 taking its case to the United Nations, requesting that there be
12 some kind of an agreement that in fact there be some regulation
13 of the dumping of pesticides in Third World countries.

14 I think Senator Mello's point --

15 CHAIRMAN ROBERTI: If the Third World countries are
16 buying it, how can you say it's dumping?

17 MR. ALVAREZ: Well, Mexico does not have pesticide
18 regulations that are worth very much, nor do other countries.

19 CHAIRMAN ROBERTI: But dumping is a statement you make
20 from the point of view of the country that's doing the selling.

21 MR. ALVAREZ: That's right.

22 CHAIRMAN ROBERTI: I think that's quite unfair, Sal. If
23 the regulations in Mexico are unfair, then you should say it's
24 Mexico that's not protecting its people rather than Israel that's
25 dumping on Mexico.

26 I mean, I'm offended by your comments, frankly.
27
28

1 MR. ALVAREZ: We think the United States should work out
2 an agreement with Israel inasmuch as the United States helped
3 fund the plant that is producing the pesticides.

4 I regret that you're offended by this. I had no
5 intention of doing that, to say the least. I was trying to
6 indicate a major concern that we registered in Israel with the
7 Israeli government and with Members of Congress when we were
8 there, that we were afraid that the tremendous use of pesticides
9 by Third World countries being bought [sic] by Israel was a
10 problem. And we would hope that it would be some kind of
11 regulation that involves this State.

12 CHAIRMAN ROBERTI: No matter what the merits of it, and
13 I'm not that conversant with it, but in the words of the old saw,
14 "It takes two to tango."

15 MR. ALVAREZ: Right.

16 I understand that, but we're asking this government,
17 both the State government and the State Department, certainly the
18 Congressional Hispanic Caucus, to push for at least our
19 governments to have a U.N. regulation of pesticides.

20 I did not mean to place the blame on Israel that I
21 believe you picked up, and I apologize for that if that was the
22 tenor of that.

23 In any case, it's a concern that we're trying to deal
24 with.

25 With respect to the question of water, certainly Israel
26 has taken a leading role in the development of drip irrigation
27 systems and is a major producer of drip irrigation systems, and
28 Europe is buying Israeli products all the time.

1 Our position has always been that California should move
2 more rapidly in that area, drip irrigation system. As much as 80
3 percent of the water that we use is going to agricultural use.
4 We're in a time of a drought, and the Department should be -- I
5 mean, this is the kind of thing that should be debated on the
6 Senate Floor: When is the Department going to move towards where
7 Europe is going and other countries are going in the innovations
8 that they have made in terms of turning deserts into towns and
9 cities, the way I saw?

10 So, we think -- we would hope that the Director would
11 move in that direction, and should be prodded in that direction
12 by the State Senate.

13 CHAIRMAN ROBERTI: Why haven't we done more on drip
14 irrigation, Mr. Parnell?

15 MR. PARNELL: Well, I believe in fact that there is an
16 awful lot of activity right now in terms of various methods of
17 conserving water. Drip irrigation is certainly one of them, and
18 I think, as the pressures for more demand for water and for,
19 quite frankly, economic pressures, come it's going to mandate
20 that there's increasing amount of focus on those kinds of
21 conservation measures.

22 But certainly there has been -- and I can't quote it all
23 to you, Senator, right here, but I can certainly tell you there's
24 been a laudable approach taken among agriculturalists to try to
25 conserve water.

26 SENATOR PETRIS: I would add, Mr. Chairman --

27 CHAIRMAN ROBERTI: Senator Petris.
28

1 SENATOR PETRIS: I would add my voice to that.

2 My understanding is that the Israelis get by with about
3 one-third of the water that we use for the same purpose. And if
4 we could adapt not only the drip system but other methods they
5 have, combine them with methods that are being developed here, we
6 wouldn't have to have these doggone North-South water wars.

7 You know, it's an area I neglected to get into, but I
8 don't think we've done enough as a State to encourage rigid water
9 conservation practices, not only in agriculture but among all of
10 us. We get spoiled when we get a good rainy season. We don't
11 look ahead very far. Now we're up against a dry season, and
12 we're going to have big problems again this year, it looks like.
13 And it ought to be an ongoing thing, it seems to me.

14 I was amazed when I learned that given X amount of water
15 that we use to accomplish this purpose, they do the same thing
16 with 30 percent, actually less than a third.

17 I'm sure you have people in your Department aware of
18 that. They must be studying this stuff.

19 CHAIRMAN ROBERTI: With that one what I understand is
20 the chemical residue that takes place.

21 SENATOR PETRIS: A little higher?

22 CHAIRMAN ROBERTI: No, I don't think so. I'm not a
23 chemist, but just giving a layman's understanding, but drip
24 irrigation doesn't appear to have the chemical residue of things
25 that are in minimal amounts, like selenium, beneficial but in too
26 much amounts, detrimental.

1 MR. PARNELL: Drip irrigation on certain crops can
2 certainly address the issue, and I certainly wouldn't pretend to
3 sit here and try to convince you that I know everything about
4 irrigation.

5 But this not too many years ago was a land of plenty in
6 terms of water, and I think it's a matter of our whole industry,
7 not only agricultural community but industrial community, and
8 those of us that just live in residential areas are having to
9 start to really look at water conservation. And more out of
10 necessity, these things are in fact happening.

11 I think the agriculturalist historically who would just
12 put water on because they thought it was time to put water on is
13 now measuring the content of moisture on plants and only applying
14 that that's necessary.

15 So, I think it is ongoing. We may have a lot of work to
16 do, Senators, but I believe that is ongoing, and certainly we can
17 encourage that activity to continue.

18 MR. ALVAREZ: Certainly in citrus, Israel's a major
19 producer of oranges, and you have those little, you know, drip
20 irrigation lines into those trees.

21 Let me move on to the third point. I have been
22 monitoring or working in terms of trying to keep track of the
23 Department of Food and Agriculture now since 1966, which makes
24 about 12 years, off and on.

25 I am amazed at how regularly the Department takes a
26 public position, urging the amendment of the ALRB; major
27 pressure. Even during the Brown administration days, major
28

1 pressure coming from the Department of Food and Agriculture to
2 amend the ALRB. And I've always been dismayed as to why do they
3 do that?

4 In my own naive way when I started lobbying 12 years ago
5 and I was green, as one reporter called me, I didn't realize that
6 the pressure was coming from the agricultural community to the
7 extent that it does. And I would wonder whether the policy of
8 this Director is going to be to pursue that?

9 I'm here on a day-to-day basis, now worrying about a
10 bill coming off of the Assembly Floor because of the Gang of Five
11 and the Republicans over there. And I know that agribusiness is
12 pushing a bill to come out of a labor committee to come over to
13 this House real fast.

14 So, I wish the Department wouldn't do that. I think
15 it's asking a little bit too much, but I think it should be on
16 the record that it's a concern of the churches that the
17 Department of Food and Agriculture does get into this area.

18 Lastly, let me say that having worked in Washington,
19 D.C., representing the United Farmworkers and the National
20 Association of Hispanic Priests the previous five years in
21 Washington, D.C. on the Immigration Bill, that it was very clear,
22 and I saw a lot of the letters coming from the Governor's Office
23 and also the Department of Food and Ag people, that they want a
24 bracero program.

25 And I think a major concern of the churches is that this
26 appointment that you're approving today is probably the most
27 important appointment that we're looking at in terms of our fear
28

1 that a new bracero program will be implemented in California next
2 year or in the near future.

3 As you know, the agricultural community cried labor
4 shortages last summer, and there's a H-2 program written into the
5 law. There's no question in our minds that agribusiness is
6 preparing itself for another onslaught this summer of crying
7 labor shortage.

8 And the Department of Food and Agriculture's been right
9 along side with the agricultural community urging that the
10 Governor and other people do something about this labor shortage.
11 And they do it without real documentation, because EDD
12 contradicts even the best testimony that agricultural lobbyists
13 can come up with, and that is that there's a high unemployment of
14 farmworkers; there has been an increasing number of unemployment
15 among farmworkers.

16 And just by note here, in the Amnesty Program, we're
17 learning that growers are giving workers less hours so that they
18 can qualify more under the Amnesty Program. So, if I worked six
19 months before, I'm only working 90 days now. And that means I
20 have a longer period of unemployment.

21 So, the push for a bracero program by this
22 administration is the most serious threat that I would bring
23 before you today with regard to the seriousness that we see this
24 appointment.

25 I don't believe that there's been an orchestrated
26 program to oppose your leadership, sir, because I'm certainly the
27 only one here today to do that.

28

1 But I felt I would be remiss in not making these
2 statements before the Committee today.

3 CHAIRMAN ROBERTI: Thank you, Mr. Alvarez.

4 What is your thought, Mr. Parnell, on if there is a
5 shortage of agricultural labor?

6 MR. PARNELL: I think the Governor, this administration,
7 has supported the program that's in place, and we're trying to
8 make it work and we think, in fact, that it is working.

9 We had ample supply of labor last year. We dealt
10 directly with the federal government to try to encourage them to
11 do the kinds of things that would allow a transfer of information
12 so that people on the other side of the border would have an
13 awareness of what opportunities were afforded them under the new
14 law. And it appears to be working, and we supported that.

15 I agree with Mr. Alvarez. This appointment to this
16 Department may well be one of the most important appointments
17 that will be made and ratified by the Senate in times to come.
18 We have a lot of complicated issues to deal with. We have a lot
19 of interesting dynamics in terms of public opinion. And I think
20 that it's going to take strong leadership. I think it's going to
21 take a heads-up kind of leadership, a calm-heads-have-to-prevail.

22 Had Mr. Alvarez given me the opportunity to talk with
23 him prior, I could have perhaps satisfied some of his concerns.
24 It is important and shouldn't be taken lightly.

25 I think I'm the person that can do the job and to meet
26 those challenges. I won't bother going through the whole list.

27
28

1 I think Mr. Alvarez is concerned, and I respect that
2 concern and certainly believe and agree wholeheartedly that this
3 is a very important appointment, and that there will be many
4 challenges that have to be met.

5 CHAIRMAN ROBERTI: Thank you.

6 I have found, Mr. Parnell, in working with you in your
7 last position with Fish and Game, you were always open and have
8 been open to new fact situations. As the world changes, you've
9 been willing to look at a different situation differently. I
10 think that's all we can expect.

11 We may not come in with the same preconceptions, and I
12 don't expect anybody that Governor Deukmejian would appoint would
13 necessarily view the world of agriculture my way, but I would
14 think that you have an open mind and are probably as free of
15 biases as we could hope for.

16 I think to that extent, maybe you can assuage Mr.
17 Alvarez a little bit. I suggest that you talk with him
18 afterwards.

19 MR. PARNELL: I'd be more than happy to do that.

20 MR. ALVAREZ: Does that mean that he'll support Senator
21 Petris' posting bill?

22 CHAIRMAN ROBERTI: Well, as I said, I think he's the
23 best we're going to get.

24 (Laughter.)

25 MR. ALVAREZ: Well, I would hope he would.

26 CHAIRMAN ROBERTI: Senator Mello.
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1 SENATOR MELLO: I want to just pursue a little bit of
2 the questioning here.

3 Going back to Senator Petris' bill for posting which I
4 supported, was that done before you were appointed?

5 MR. PARNELL: Yes, that was debated before I came on
6 board.

7 SENATOR MELLO: So he was not the Director; in fact, he
8 was still over at Fish and Game when that bill came through.

9 MR. PARNELL: Yes.

10 SENATOR MELLO: As I read your statement, you had the
11 allegation that he was leading the charge against the posting
12 bill.

13 MR. ALVAREZ: I was careful to say the Department.

14 SENATOR MELLO: All right, but I think it's only right
15 to clarify that it was before him being the Director there.

16 I'd just like to report as far as drip irrigation is
17 concerned in my general area and throughout other areas that I'm
18 aware of in the State, there's a great increase in the use of it
19 for several reasons: it uses less water; it's less expensive
20 because you're not using the greater quantity.

21 There is a capital loss of putting in the lines. We did
22 pass a few years ago, I don't know if it's still in effect even,
23 a tax incentive on their income tax in order to do more of that,
24 and that's something, I think, as we get into another drought
25 year, which we're certainly in, we have to think about.

26 Mr. Alvarez, you mentioned that workers now are working
27 less time, you know, 90 days and so forth.

28

1 The thing that's puzzling to me is the fact that right
2 now with the Amnesty Program, there are penalties and sanctions
3 against any employer who employs someone who is an undocumented
4 alien. Now see, we're not talking about Green Cards; they have a
5 legal right to be here.

6 Right now there's no labor shortage in my area. There's
7 an adequate amount of labor, even though there is a lower rate of
8 unemployment.

9 But there is a labor shortage. Burger King right now is
10 paying a \$25 fee to everyone of their employees who can bring in
11 a new applicant, so there's a labor shortage amongst many of the,
12 of course, entry level areas.

13 But I think you're mistaken as far as an employer. Any
14 employer -- and here's the point I'm making -- any employer who
15 hires a person who's undocumented is exposing himself to severe
16 penalties and fines under the current law, under the Amnesty
17 Program, because they're blanketing in those who worked in 1986
18 and '87 in agriculture for a 90-day period -- if you worked in
19 '88 you're not eligible to come under the Amnesty Program -- or
20 those who worked here since 1983 who can prove that they have a
21 history of not being on Welfare, not committing any crimes, being
22 employed during that period of time.

23 So I'm not aware of any employer who's risking fines and
24 penalties for hiring an undocumented worker.

25 MR. ALVAREZ: Senator Mello, let me follow up on what
26 I've heard people in the fields say is happening.
27
28

1 Senator Pete Wilson orchestrated with the State
2 Department and Mexico to allow a flood of workers in last summer.
3 They were put on jobs with the understanding that they were going
4 to apply for Amnesty, and they have applied for Amnesty.

5 SENATOR MELLO: Last summer, that's '87.

6 MR. ALVAREZ: Last summer, that's correct.

7 SENATOR MELLO: In the statement you made, I thought it
8 was occurring right now.

9 MR. ALVAREZ: No.

10 And I have heard directly from people in the field that
11 what is going on is that the people that have come over signed at
12 the border a statement that they worked the 90 days before.
13 There's a contention over that as to whether they did or didn't.
14 In any case, the grower got people coming over on that signature.

15 The people over here in Salinas that lived and were
16 working over here for years weren't even getting employed because
17 the people that crossed over the border got preference over their
18 jobs because the wage rate was dropped, and the Farmworkers Union
19 held five major marches in Salinas last summer because of the
20 wage drop.

21 The people that got hired are the people that came at
22 the border and signed, "we worked." The Union's contention to me
23 is that in fact the people in the Salinas Valley know that those
24 workers that signed at the border and are working now aren't
25 going to be able to qualify for Amnesty.

26 The employer's off the hook. The labor contractor's off
27 the hook because those people are going to find out they're not
28 going to be able to qualify.

1 That's the experience from the fields, Senator Mello.

2 That's all I can say.

3 SENATOR MELLO: Well let me tell you this, the Committee
4 which I Chair is the Subcommittee on Economic Problems Facing
5 Agriculture. We held a hearing, and we had a half a day
6 testimony from the INS, Department of Immigration Service, and
7 farmworker groups were there as well as growers. There were
8 22,000 applicants from a two-county area; only 375 had been
9 certified.

10 For an employer right now, they will not hire a person
11 who just has a letter signed at the border. They have to have in
12 their hand either a Green Card, which provides that legal status
13 to be here, or secondly, they must have applied for Amnesty and
14 given this conditional approval of being here while their
15 application is being processed.

16 Now at that point their wife and children aren't under
17 Amnesty. In fact, the Department of INS can even ship back, and
18 they have made threats, to ship back these spouses or the
19 children, which I think is really wrong, while they're processing
20 an application.

21 So I think I don't know of any way where an employer can
22 hire an undocumented person who does not have either a Green Card
23 or the conditional Amnesty in their hands, legally, without
24 facing this high penalty and fine.

25 So, I just wanted to make that point. The program
26 really is not working as they had hoped it would because of many
27 problems, but the problems are going to go on because many people
28

1 are not applying for Amnesty, but they're still going to be here.
2 It's going to be tougher for them to get a job because the
3 employer now is going to be more at risk in hiring them, with
4 \$10,000 fines and add-ons that are added on to that.

5 MR. ALVAREZ: I just know that three weeks ago, while I
6 was walking the hallways here, saying just what I've just been
7 saying. And I'm not representing the Union, but I can tell you
8 this, that that's what I heard.

9 SENATOR MELLO: I think I'm hearing a little different.
10 I'm trying to tell you the way the law's been represented to me.
11 It's not that easy right now, even textile workers in Southern
12 California, anybody that hires an undocumented citizen right now
13 that can't prove their legal status here is subjecting themselves
14 to major fines and penalties.

15 MR. ALVAREZ: The major question is: will we have a
16 guest worker/bracero program a year from now or not? That's what
17 the Council of Churches is trying to find out.

18 SENATOR MELLO: That's being proposed in Washington. I
19 don't know. There's no labor shortage right now in agriculture.

20 Jack would know better than I on a statewide basis,
21 probably. But I don't hear any growers complaining about the
22 lack of labor.

23 MR. PARNELL: That's correct, Senator.

24 SENATOR MELLO: I don't see how they could approve a
25 guest worker program. Where are they going to get a job?

26 Thank you, Mr. Chairman.

27 CHAIRMAN ROBERTI: Thank you, Senator.

1 Are there any other questions of Mr. Parnell?

2 Thank you, Mr. Alvarez.

3 Are there any other questions? Any other opposition in
4 the audience?

5 Do I hear a motion?

6 SENATOR MELLO: Mr. Chairman, I'd like to move his
7 confirmation to the Floor.

8 CHAIRMAN ROBERTI: Senator Mello moves Mr. Parnell's
9 confirmation be recommended do pass to the Floor.

10 Secretary will call the roll.

11 SECRETARY WEBB: Senator Ellis. Senator Mello.

12 SENATOR MELLO: Aye.

13 SECRETARY WEBB: Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Senator Craven. Senator Roberti.

16 CHAIRMAN ROBERTI: Aye.

17 The vote is three to nothing; confirmation is
18 recommended to the Floor.

19 Congratulations.

20 MR. PARNELL: Thank you very much.

21 (Thereupon this portion of the Senate
22 Rules Committee Hearing was terminated
23 at approximately 3:55 p.M.)

24 --oo0oo--
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28

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this
____ day of April, 1988.


EVELYN MIZAK
Shorthand Reporter



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26 Reported by:

27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

MARTHA C. FALLGATTER, Member
Trustees of the California State University

WILLIAM D. CAMPBELL, Member
Trustees of the California State University

FERNANDO ALDECOA, Member
Youthful Offender Parole Board

TERRI M. CARBAUGH, Legislative Director
California State Student Association

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We'll go to Governor's Appointees appearing today, Martha Fallgatter, Member of the Board of Trustees of the California State University.

Ms. Fallgatter, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you are qualified to assume this position?

MS. FALLGATTER: Thank you, Senator.

I feel that I'm qualified because I'm a product of the CSU system, educated at San Diego State University. I also have a background in business and a lot of background in community involvement.

I feel through that experience it has developed me into a position to where I can be an effective policy maker for a system. And I believe in the system, and I would like to do that.

CHAIRMAN ROBERTI: Thank you very much.

Yes.

MS. CARBAUGH: My name is Terri Carbaugh. I represent the CSU Students, and we're very much in support of the confirmation of Trustee Fallgatter. She's done a very good job and has been very open for student input.

CHAIRMAN ROBERTI: Thank you very much.

Ms. Fallgatter, I received in the mail a while back, and we normally don't say from whom because I don't think from whom is relative, a political brochure.

1 Now, I'll preface that by saying we all engage in
2 political brochures. We understand that in 1986, you were the
3 Chair of the Republican County Committee in Kern County.

4 MS. FALLGATTER: Yes, sir.

5 CHAIRMAN ROBERTI: Now, this brochure, I think it goes a
6 little bit beyond the pale of fair comment. I just want you to
7 answer questions on it.

8 Are you acquainted with this at all?

9 MS. FALLGATTER: Yes, I can, and I can probably answer
10 your question before you ask it, but I'll hold back.

11 CHAIRMAN ROBERTI: Let me preface this so I get my digs
12 in, because I'm not saying I'm attributing it to you.

13 MS. FALLGATTER: I can understand.

14 CHAIRMAN ROBERTI: "Vote for" and "Vote against." Now,
15 the Republicans, understandably their pictures are better, and
16 they're all handsome, white males.

17 The Democrats --

18 SENATOR ELLIS: We are.

19 (Laughter.)

20 CHAIRMAN ROBERTI: The Democrats generally start getting
21 on shaky ground when you start using photographs, even though
22 everybody knows that Tom Bradley is black.

23 So then, it was "vote for" and "vote against." The
24 "vote for" on the Republicans is: "jobs, business, farmers,
25 family values, schools, law enforcement, workfare, and English."
26 That's a fair comment.

1 "Vote against" is: "Rose Bird," I guess that's a fair
2 comment, sort of. I mean, the cumulative starts getting to be a
3 little tough to take: "liberals, taxers, spenders, unions,
4 bilingual ballots, homosexual preference," -- doesn't say laws on
5 homosexual preference but just straight out "homosexual
6 preference" -- "minority preference" is a strange way to put it,
7 and that's juxtaposed to "English".

8 Now, you can answer what do you think of this? Did you
9 have anything to do with it? I think you were the Chair at the
10 time.

11 MS. FALLGATTER: Yes, that is correct, I was the Chair
12 at the time.

13 It was unfortunate that the ad was put together that
14 way. It was put together by a zealous volunteer. I did not
15 approve the ad before it went into the paper, which I will take
16 responsibility for. It was a mistake on my part.

17 I immediately made some clarification after that ad and
18 sat down also with the members at the Bakersfield Californian to
19 find out exactly where the problem came in and how it came about
20 that way.

21 So, yes, they --

22 CHAIRMAN ROBERTI: Did you ever make any statement
23 disavowing it or anything of that nature?

24 MS. FALLGATTER: We pulled out, I know, for -- the ad
25 ran one other time and I believe -- I know that we pulled out
26 "unions" and I believe we pulled out -- I'm not positive, but I
27 believe we may have pulled out the "homosexual" --
28

1 CHAIRMAN ROBERTI: If you pulled out "unions", I can
2 understand that because unfortunately there are an awful lot of
3 union members that vote Republican --

4 MS. FALLGATTER: Oh, and I agree --

5 CHAIRMAN ROBERTI: -- but "homosexual preference", that,
6 you know --

7 MS. FALLGATTER: Like I said, I have got to take
8 responsibility.

9 CHAIRMAN ROBERTI: As a Democrat I would resent it, and
10 I think all Democrats would, you know.

11 MS. FALLGATTER: And as I said, as the Chairman, I do
12 have to take responsibility for that because I was the Chairman.

13 It was unfortunate and obviously would not be something
14 that I would want put in, but like I said, that is what happens
15 when, I guess, you have a lot of volunteers working and --

16 CHAIRMAN ROBERTI: But you will say for the record, and
17 I'm not putting words in your mouth, but you did not draft it?

18 MS. FALLGATTER: No, no, I did not. I can say that for
19 the record, and I did not pre-approve it either.

20 CHAIRMAN ROBERTI: Were you informed of the text?

21 MS. FALLGATTER: No -- I mean, I was informed -- I knew
22 that it was an "our team/your team", and that there would be the
23 Republican names and the Democratic names. I knew that part.

24 But I didn't know the for and against part.

25 CHAIRMAN ROBERTI: Any questions? Senator Petris?

26 SENATOR PETRIS: No, I think you've covered it.
27
28

1 I wanted to get a copy of that to see if I could get
2 Senator Rogers' autograph.

3 (Laughter.)

4 SENATOR PETRIS: Well, it's unfortunate, but a lot of
5 those horrible things happen during campaign time and we lose
6 sight. Like you pointed out, some very zealous person probably
7 loses sight of the basic things.

8 Hopefully the era of negativism is behind us. We're all
9 going to follow the lead of Mayor Agnos in San Francisco who
10 never said a bad word about his opponent and stuck to the
11 positive. He got a 70 percent vote --

12 MS. FALLGATTER: And I would agree --

13 SENATOR PETRIS: -- in a race that he wasn't supposed to
14 win.

15 CHAIRMAN ROBERTI: Well, I'll be more kindly in this
16 regard, because candidates I have supported have done the same
17 things, and then I've been accused because it's my money that
18 paid for it.

19 I guess it's not offensive enough for me to say we the
20 guilt by association that just has to be so strong. It's
21 borderline, so as one politician I'll be understanding. But it
22 was rather strong.

23 MS. FALLGATTER: And I can see where you're coming from,
24 and I can understand also.

25 Like I said, it was an error and a mistake, and
26 obviously once it's printed and published it was a little
27 difficult to pull back.
28

1 CHAIRMAN ROBERTI: I have a couple questions on the
2 position per se.

3 A report recently was issued which raises concerns that
4 many of California's high schools lack sufficient resources and
5 faculty to offer courses necessary for students to meet UC or CSU
6 standards. Forty percent are statistics here of the young people
7 entering CSU need remedial English and, evidently, remedial math
8 before they take college-level classes.

9 What impact do you believe if we try to increase the
10 admission standards for CSU, and I understand the reason we
11 should do that, but how are we going to work that in with the
12 numbers of people who need all this remedial work? Can we do
13 both at the same time? Are we going to put an accent on one
14 rather than the other? Or, you don't feel that the statistics
15 are correct for the young people entering who are in that much
16 need of remedial work?

17 MS. FALLGATTER: Let me make sure, perhaps, that I
18 understand your question.

19 Raising the standards and increasing them with the
20 different classes and curriculum that we'll be introducing into
21 the high school system so that the students will be able to reach
22 the higher standards of entrance into the CSU, I believe, is
23 something that can be accomplished and should be accomplished,
24 and basically for the reason that they have found that students
25 that are given those classes and pressured in the high school
26 years to attain that knowledge end up having a higher retention
27 when they enter into our university system. And to me, we can
28

1 bring everyone that we want to into the university, but we really
2 haven't done our job nor accomplished it unless we help them and
3 make sure that they graduate.

4 CHAIRMAN ROBERTI: What's CSU doing right now as far as
5 remedial courses? Do we have courses set up on English?

6 MS. FALLGATTER: We have courses -- now we're starting
7 gradually into 1990 that we will have all the classes in the
8 schools in order to meet the requirements.

9 Also, along that, though, is, you know, we have a summer
10 bridge program that works helping the students, you know, before
11 they come into schools. We have the middle years programs and
12 the mentoring, which are also helping those students and minority
13 students in order to gain a better education so that they're more
14 prepared, and again, to stay in the school once we get them into
15 the university.

16 CHAIRMAN ROBERTI: Do you have any direct contact with
17 the high schools, or does CSU, rather, have any contact with the
18 high schools if they feel certain high schools, or a certain
19 curriculum in a certain district is falling behind, to get the
20 high school itself to --

21 MS. FALLGATTER: I would not be able to speak directly
22 to that question except to say that from my knowledge and time on
23 the Board that I know that we have direct contact with the
24 counselors in the schools through the Chancellor's office. And I
25 would believe that there would have to be that interaction and
26 coordination.

27 CHAIRMAN ROBERTI: Any other questions? Senator Petris.
28

1 SENATOR PETRIS: You've been on almost a year now. I'm
2 interested in two or three areas; I hope you'll bear with me.

3 One has to do with fees. In fact, I ask all the
4 nominees that come in.

5 I am really appalled at the cost of education to our
6 students in the state today in our public schools compared to
7 what it was -- well, maybe it's not fair, because it was about a
8 hundred years ago that I went to school. But I know at UC, for
9 example, I paid 27.50 per semester. That was it.

10 Now it's way up there in the hundreds and hundreds, and
11 Cal State has gone up correspondingly. I have a figure here of
12 \$378 per semester for a student down at San Diego.

13 Are the fees the same at all campuses?

14 MS. FALLGATTER: Uh-huh.

15 SENATOR PETRIS: And then by the time you buy your
16 books, that's somewhere between \$100-200 per semester, and the
17 cost of living and so forth.

18 I've been hoping somehow to bring about a change so that
19 we can reduce those fees and have the people who really should be
20 the supporting the university system, all the people through our
21 normal flow of General Fund money, tax sources, and whatever
22 federal money may come in, because as predicted, the gradual
23 increase in fees over the past several years has resulted in a
24 much greater demand for student loans, student grants, and we
25 find an increasingly higher percentage of students coming out of
26 the university with a pretty hefty mortgage on their backs.

27
28

1 We have people who work at collecting loans that are in
2 default. I know somebody who does that full-time. He calls
3 people up all over the country, they're graduates.

4 But in addition to making it a very difficult struggle
5 while they're going through school, then they've got to face the
6 problem of paying it back in addition to all the other
7 obligations that appear in their lives when they're just trying
8 to get started.

9 I guess what I'm asking you is, what is your attitude on
10 fees? Do you think we're in good shape, that we ought to
11 continue this trend? Do you agree that we ought to reduce it as
12 much as we can in order to ease that burden on such a large
13 number of students? Do you think we have a fair system now on
14 fee schedules?

15 MS. FALLGATTER: I would say, to begin answering the
16 question, that I helped pay off those fees and student loans when
17 my husband graduated from San Diego State University, so I think
18 I can speak --

19 SENATOR PETRIS: I picked the right campus.

20 MS. FALLGATTER: Yeah, I guess -- first-hand.

21 It's difficult. Yes, I have been on the Board for one
22 year. Going through and learning the budget, as you know it, is
23 a little trying for me as a novice.

24 I feel that, obviously, if we could give students an
25 education without charging them, that would be a wonderful thing
26 to be able to accomplish. I know also, though, that we've got --
27 it takes a lot of money to run a university so there has to be
28 some kind of a balance somewhere.

1 I think, if my understanding is correct, that when we go
2 through and if the fees should be raised at any point in time,
3 that that comes back into the Legislature to play a role in that
4 element of it, too, or with the Governor.

5 So, from my point of view, I would like to be able to do
6 the most that could possibly be done for a student to receive an
7 education. At the same time and token, I have to work within the
8 system also.

9 SENATOR PETRIS: Well, I want to know, I guess, more a
10 general attitude than a specific fee.

11 MS. FALLGATTER: What my --

12 SENATOR PETRIS: You're sitting on the Board, and you're
13 going over the budget, so the discussion arises, "Well, we're
14 going to be short. We need more money. We are we going to get
15 it?"

16 Somebody says, "Well, raise the fees." And everybody
17 stands up and applauds.

18 Is that the case?

19 MS. FALLGATTER: No --

20 SENATOR PETRIS: Or do you say, "Wait a minute. Let's go
21 to the Governor and see if we can get the Governor to provide
22 more money from the budget and, if necessary, to raise taxes to
23 make certain that we're not smothering our students with this
24 problem," which is where we're heading.

25 We may not be doing it today, but before long that's
26 going to be the case. And it's been measured by people who study
27 these things. Every fee increase, you can measure the number who
28

1 drop out; you can measure their social and economic level, and
2 you can measure the talent that is lost to us. I think it's a
3 great loss to the nation. It's happening all over the country.

4 MS. FALLGATTER: I believe I can answer your question
5 now because I understand fully what you're saying.

6 From my point of view, if that were to be the case, my
7 belief and my feeling is that the student should have the best
8 break possible that a student should have. That when we give the
9 ability to a student to go through our university system and to
10 graduate, and to go ahead and put himself back into our society
11 in the State of California, we are gaining much more economic
12 gain at that level than we would be out of a higher fee.

13 SENATOR PETRIS: That's fine.

14 Now, another problem confronting our system is faculty.
15 I'm told that we're going to need 8,000 new faculty members in
16 the next few years, next decade.

17 I'm also told by Governor Dukakis that nationally, we're
18 going to lose half our K-12 teachers in the next ten years, half.
19 I'm told that in the schools of education in California, the
20 enrollment is way down compared to prior years. Young people
21 simply don't want to go into teaching. It's not glamorous. They
22 read about battle fatigue. They read about all the other
23 problems that are dumped on teachers; the pay is very bad.

24 So, there's a correlation there between the decline in
25 enrollment in teachers' colleges, as we used to call the State
26 system, and the conditions outside.

1 My question is, is there some plan growing within the
2 Board? Do you personally plan to do something about recruiting
3 our teachers, making the job more attractive, and also trying to
4 motivate more and more young people to go into teaching?

5 Let me also add that Governor Dukakis has also pointed
6 out -- and he does this as the son of a teacher, so he's aware of
7 all this -- that in Japan, in contrast to the stark drought that
8 we are facing for K-12 teachers, in Japan for every vacancy of a
9 teaching position at that level, they have 40 applicants standing
10 by vying for the job.

11 Now, that tells me something not about wealth or about
12 materialism or anything else, but it tells me something about a
13 culture that's substantially different from ours, and it makes me
14 ashamed that we don't have any people lined up for those teaching
15 jobs. See what I mean?

16 MS. FALLGATTER: Uh-huh.

17 SENATOR PETRIS: And I want to encourage everybody in
18 officialdom and outside of officialdom to be cognizant of this
19 and try to do something.

20 What's going on at the State level to meet this 8,000
21 need that we're going to have very shortly?

22 MS. FALLGATTER: I would bring up three points that are
23 currently going on through the Board of Trustees.

24 First, we made that a top priority, and there's been a
25 task force already formed that's going into learning just how we
26 can go about the more positive ways of recruitment, be it with
27 the national seminars that are out there, so that we can really
28

1 pull in the people into our CSU system. That report should be
2 given to the Board at either our May or July meeting because it's
3 coming to culmination.

4 SENATOR PETRIS: Now is that a task force composed of
5 Board Members, or an outside one?

6 MS. FALLGATTER: That's a task force composed of people
7 within the Chancellor's office, Presidents within our system, and
8 Trustee Denny Campbell is not personally a member, but he has
9 been sitting in with all the meetings and has been pushing very
10 hard on this task force, number one.

11 Second, I would say that you'd notice in the budget this
12 year, we have \$2.5 million for research, research that's a
13 hands-on participation with both faculty and with students. But
14 what it does, too, is it's one further element to show those
15 teachers and faculty throughout the nation that they need to come
16 into our universities, because the way that the nation's going
17 now, the research that's going on, a faculty member doesn't
18 exactly want to come into where they know there won't be some
19 funds for them to continue their research and be on top of their
20 field for the students that they're teaching.

21 And third, I would mention our forgivable loan program
22 which is a wonderful program for women and minorities to where
23 they can come in to our system, obtain their Ph.D, be given
24 \$10,000 a year, and then come back and work in our system for
25 five years, and their entire Ph.D. loan is forgiven. To me,
26 that's another way --

27 SENATOR PETRIS: Are you supporting that?
28

1 MS. FALLGATTER: Oh, a thousand percent. Not only
2 supporting it, it would be wonderful if the Legislature could --

3 SENATOR PETRIS: Expand it?

4 MS. FALLGATTER: -- add more money to it, yeah.

5 SENATOR PETRIS: Well, I think we'd be willing. I
6 happen to serve on that subcommittee, but we always run against
7 the Department of Finance that says, "We oppose it," and the
8 signal normally is that they have set their level, and we can't
9 get it past the Department, which means the Governor's very firm
10 on it.

11 As an Appointee of the Governor, I would urge you to try
12 to get his ear, if not on all these things, at least on that loan
13 forgiveness thing. I think it's a marvelous inducement to have
14 those students come back into the system and go into teaching.

15 MS. FALLGATTER: It's wonderful.

16 Thank you, Senator.

17 SENATOR PETRIS: I appreciate your comments. Let me
18 just ask about one other area.

19 Our information regarding the tenured faculty in the
20 system from the time period of 1975 through last year, in spite
21 of all our efforts about increasing the percentage of people in
22 the minority categories, which other than women -- women have
23 improved their situation and their proportion has gone up -- but
24 among Blacks and Hispanics and Native Americans, the percentages
25 have dropped. Among Blacks it's a dramatic drop from 6.16 to 3.6
26 percent. Maybe in numbers it still comes out pretty well, but
27 looking at the percentages, among Hispanics the drop is smaller:
28

1 5.88 to 5.19; and among American Indians, it only started at .52,
2 and they're down to .50.

3 We were hoping those figures would be going the other
4 way. Can you comment on that for us? Do you know why this is
5 happening?

6 MS. FALLGATTER: Well, can I back up for a minute? Are
7 you talking of faculty or --

8 SENATOR PETRIS: Yes, tenured faculty.

9 MS. FALLGATTER: Tenured faculty, okay.

10 Well, I think it falls back into the position of where
11 we're looking at the pool that's available for us. Somewhere,
12 somehow, obviously, we've made a terrible mistake because we
13 don't have the minority faculty out there to draw upon. You'll
14 find now that people -- different universities throughout the
15 nation are fighting over the same minority or woman faculty
16 member to get them on their campus because the pool is so small.

17 There's where I go back into that forgivable loan
18 program, which would be wonderful to expand upon, because there's
19 a way of helping us to provide more Ph.D.s to put into that pool.

20 Also, we're working a lot with the mentoring through the
21 undergraduate level and hoping to get Hispanics and Blacks into
22 the Ph.D. fields so that they will better represent those
23 nationalities in our system.

24 There's also the California Predoctoral Program, which
25 is a joint program between the CSU and UC, working with those
26 individuals through undergraduate, through graduate, to Ph.D.,
27 helping to alleviate their costs during school, which is
28 basically a forgivable loan also, in order to build the pool up.

1 It's kind of like you look at it, and you think this is
2 what we need, but we've got to move real fast in order to build
3 the pool up because where we are, Senator, I agree with you a
4 thousand percent. We're not in --

5 SENATOR PETRIS: Is that pool being tapped by attractive
6 offers from private sources to go into the private sector and
7 thereby pulling some of the qualified minorities out of that --

8 MS. FALLGATTER: Oh, into the private enterprise instead
9 of into the system?

10 SENATOR PETRIS: Yes.

11 MS. FALLGATTER: I do not know those --

12 SENATOR PETRIS: I understand there's some kind of a
13 drain there, too, because their salary offers are much more
14 attractive.

15 MS. FALLGATTER: I would imagine that that could also be
16 true. I will point out one thing that falls along that same
17 line.

18 When I was on the campus at San Diego I was going
19 through their biotechnology labs, and they were saying that their
20 students, graduate and undergraduate, are being pulled right out
21 of the university into the private sector with paying jobs that
22 are incredible, and we're not getting them staying in our system
23 because the money's so good on the outside.

24 SENATOR PETRIS: Have you visited all the campuses?

25 MS. FALLGATTER: Almost all of them, about 12 so far, so
26 I still have a few more to go, but it's pretty good in a year.

27

28

1 SENATOR PETRIS: That's impressive for a short period of
2 time.

3 MS. FALLGATTER: I love the campuses.

4 SENATOR PETRIS: Are you planning to visit them all?

5 MS. FALLGATTER: Yes, sir.

6 SENATOR PETRIS: Do you talk with students when you do
7 this?

8 MS. FALLGATTER: Most definitely.

9 SENATOR PETRIS: What are the problems that they bring
10 to your attention the most?

11 MS. FALLGATTER: Well, it's really rather interesting
12 that all the campuses that I've been on, I haven't really felt a
13 problem from the students. I've felt overwhelmed. I've watched
14 these students; I've sat in on classes with them to watch and see
15 how they're being educated and how much they absorb.

16 You know, you forget when you were in college that
17 there's that much knowledge and how tough it is. I almost think
18 going to college is probably the toughest job available.

19 But to watch how much they absorb, to see the student
20 leadership on the campuses, and to see the research and the
21 hands-on participation that those students are doing, it's
22 absolutely overwhelming. And when you leave a campus, you're so
23 proud of what we do, that you just want to tell everybody, and
24 you want to do it more and more.

25 SENATOR PETRIS: You just had your chance, thank you.

26 MS. FALLGATTER: Thank you.

27 SENATOR ELLIS: Move.
28

1 CHAIRMAN ROBERTI: Senator Ellis moves confirmation be
2 recommended to the Floor.

3 Is there any opposition?

4 Secretary will call the roll.

5 SECRETARY WEBB: Senator Ellis.

6 SENATOR ELLIS: Aye.

7 SECRETARY WEBB: Senator Mello. Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven. Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 The vote is three to nothing; confirmation is
12 recommended --

13 SENATOR PETRIS: Senator Mello wanted it open.

14 CHAIRMAN ROBERTI: All right. Senator Mello wants it
15 open because I think he wants to cast an aye vote, so you've got
16 three Democrats and one Republican.

17 Senator Ellis moves the roll be held up. Without
18 objection, such will be the order. As soon as he comes in we'll
19 close the roll.

20 Congratulations, and thank you very much.

21 MS. FALLGATTER: Thank you, Senator.

22 (Thereupon the Senate Rules Committee
23 acted on legislative matters.)

24 CHAIRMAN ROBERTI: For the record, I'd like to point out
25 that we are taking up the appointments of the CSU Trustees today
26 because the Governor did announce, I'm very happy that he did,
27 the appointment of a Trustee of Hispanic background, Mr. Ralph R.
28 Pesqueira, for the California State University.

1 I had indicated that since there was none on the Board
2 of Trustees sometime last year, that it would be difficult if not
3 impossible for us to confirm any further without having the
4 Hispanic community represented. For some reason for as long a
5 period of time as that, from what I understand, the Governor has
6 appointed a very outstanding person who is of Hispanic origin.

7 We will therefore move as we have been moving with the
8 other Appointees to the Board, and we will take up Mr. William D.
9 Campbell, Members of the Board of Trustees of the California
10 State University, and then Fernando Aldecoa, Member of the
11 Youthful Offender Parole Board, as well.

12 (Thereupon a brief recess was taken.)

13 CHAIRMAN ROBERTI: The Committee will come back to order.

14 (Thereupon the Senate Rules Committee
15 acted upon legislative matters.)

16 CHAIRMAN ROBERTI: Senator Mello moves that the call be
17 lifted on the appointment of Martha Fallgatter.

18 Secretary will call the roll.

19 SECRETARY WEBB: Senator Mello.

20 SENATOR MELLO: Aye.

21 CHAIRMAN ROBERTI: The vote is four to nothing;
22 confirmation is recommended to the Floor.

23 William D. Campbell, Member of the Board of Trustees,
24 California State University.

25 Mr. Campbell, we'll ask you the same as we've asked the
26 other Appointees, and I guess in your case it's why you feel
27 you're qualified to be retained in this position?
28

1 MR. CAMPBELL: Thank you.

2 I have enjoyed the privilege of service on the Board and
3 believe that I will work hard to attempt to do a good job because
4 I think through education, we can maybe accomplish a lot of the
5 things in this state that all of us share.

6 I had the privilege of serving for three years on the
7 Master Plan Review Commission of Higher Education as Vice Chair,
8 and when I was finished with that service, then I was appointed
9 to this Board. So I do bring a little bit different perspective
10 to the Board in that we have a working knowledge of the other
11 systems, and I think that will be beneficial.

12 CHAIRMAN ROBERTI: Thank you very much.

13 Are there any questions?

14 SENATOR ELLIS: Move.

15 CHAIRMAN ROBERTI: Senator Ellis moves confirmation be
16 recommended to the Floor.

17 I will ask you some of the questions we asked the prior
18 Appointee, and that is what measures do you think CSU should
19 adopt or has adopted to increase the number of minorities and
20 women entering the teaching profession?

21 MR. CAMPBELL: That's a subject that I am very concerned
22 with. At last July's priority meeting, I moved for a priority in
23 that area, and that was the basis for our review this year.

24 I think the plans that Trustee Fallgatter outlined are
25 two of our key provisions. I think that one other aspect that
26 we're going to incorporate in our plan at the State University is
27 to have Board oversight in this area on an annual basis to
28

1 compare each of these campuses and just see which direction
2 they're moving, because I think it's one of the most critical
3 things we face in the system.

4 Not only do we have to replace the 8,000-11,000
5 professor and tenured slots with top professionals, but we have
6 to lead the country in that balance in finding key minority and
7 females for the tough positions, especially in the sciences and
8 some of the areas where we've had a very difficult time in
9 finding proper people.

10 CHAIRMAN ROBERTI: Overall, what are the proportions of
11 minorities and women in the teaching profession currently --

12 MR. CAMPBELL: I'm going to have to do this --

13 CHAIRMAN ROBERTI: -- at CSU?

14 MR. CAMPBELL: I think, and I could be very incorrect on
15 this, but I think the women in the tenured teaching spots is less
16 than 20 percent, maybe 17, and I think it's our goal to increase
17 that up to the proportion they have in this State, which is 50
18 percent.

19 And in the other minority areas, I think the statistics
20 that Senator Petris mentioned earlier are very much in line.

21 We've done a fair job by some standards, but a very
22 lousy job by others.

23 CHAIRMAN ROBERTI: Any other questions? Hearing none,
24 there's a motion before us.

25 Secretary will call the roll.

26 SECRETARY WEBB: Senator Ellis.

27 SENATOR ELLIS: Aye.
28

1 SECRETARY WEBB: Senator Mello.

2 SENATOR MELLO: Aye.

3 SECRETARY WEBB: Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Senator Craven. Senator Roberti.

6 CHAIRMAN ROBERTI: The vote is four to nothing;
7 confirmation is recommended to the Floor.

8 Congratulations.

9 MR. CAMPBELL: Thank you.

10 CHAIRMAN ROBERTI: You were here, I take it, to testify
11 in favor?

12 MS. CARBAUGH: Yes.

13 For the record, the CSU Students support your
14 confirmation of Trustee Campbell.

15 CHAIRMAN ROBERTI: Thank you very much.

16 Finally we have the appointment of Fernando Aldecoa,
17 Member of the Youthful Offender Parole Board.

18 MR. ALDECOA: Good afternoon, Senator.

19 CHAIRMAN ROBERTI: Good afternoon to you.

20 We'll start by asking you the same question we ask all
21 the gubernatorial Appointees, and that is why you're qualified to
22 assume this position?

23 MR. ALDECOA: Quite honestly, Senator, this is actually
24 my second appointment to the Board. I spent approximately 3½
25 years previously on the Board, from April of 1983 to October of
26 1986, when I was asked to take a position with the Youth and
27 Adult Correctional Agency as Deputy Secretary in Compliance
28

1 Review. I stayed there approximately for a year and a half, less
2 than a year and a half, and just went back to the Board recently,
3 relocated back south.

4 Most of my adult life, approximately the last 20 years,
5 has been involved in the criminal justice system, 10 years as a
6 police officer. I've been involved in a lot of different issues
7 involving the whole aspect of the system.

8 CHAIRMAN ROBERTI: Very good.

9 Are there any questions of Mr. Aldecoa?

10 SENATOR MELLO: Move.

11 CHAIRMAN ROBERTI: Senator Mello moves confirmation be
12 recommended to the Floor.

13 Secretary will call the roll.

14 SECRETARY WEBB: Senator Ellis.

15 SENATOR ELLIS: Aye.

16 SECRETARY WEBB: Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Senator Craven. Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is four to nothing; confirmation is recommended
23 to the Floor.

24 MR. ALDECOA: Thank you very much, Senators.

25 (Thereupon this portion of the Senate
26 Rules Committee hearing was terminated
27 at approximately 4:40 P.M.)

28 --oo0oo--

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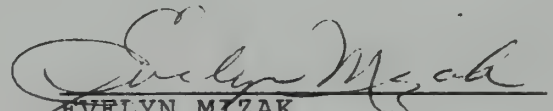
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

14th day of April, 1988.


EVELYN MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 20, 1988

1:52 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

EDDIE YLST, Superintendent
Correctional Medical Facility at Vacaville

SENATOR BARRY KEENE

GEORGE MARSH, Former Employee
Department of Corrections

DON NOVEY, President
California Correctional Peace Officers Association

JIM WARE, Vice President
National Association for the Advancement of Colored People

HOPE VASQUEZ
Mexican-American Correctional Association

WILLIAM CARROLL, Mayor
City of Vacaville

DANNY MACIAS, State President
Chicano Correctional Workers Association

ED DAVIS, President
Association of Black Correctional Workers

APPEARANCES (Continued)

DONNA WILLIAMS, Chairperson
Asian Advisory Task Force
Northern California Asian Peace Officers Association

BERTHA VASQUEZ
Chicano Correctional Workers Association

DAVE DEALBA, Chair
Hispanic Law Enforcement Task Force

JESSE MILES, Chairperson
Association of Black Correctional Workers

BEVERLY KANE, Chairperson
Departmental Women's Liaison Council

CRES SALONGA, President
Filipino-American State Employees Association

JANE CABREROS, Chairperson
CMF's Women's Liaison Council

MARTIN RODRIGUEZ
Filipino-American State Employees Association

LUPE VALIZAN, Chairperson
Mexican-American Correctional Association
Hispanic Advisory Task Force of Vacaville

AL CARDOZA, Sheriff
Solano County Sheriff's Department

MIKE NAIL, District Attorney
County of Solano

MICHAEL A. KELLEY, Director
Department of Consumer Affairs

SENATOR HERSCHEL ROSENTHAL

TOM CECIL, Deputy Director, Legal Affairs
Department of Consumer Affairs

CHON GUTIERREZ, Director
California State Lottery

ANA MARIA ORTEGA, Former Employee
Department of Finance
State Office of Economic Opportunity

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We'll now proceed to Governor's Appointees, Eddie Ylst, Superintendent, California Medical Facility.

Senator Keene.

SENATOR KEENE: Thank you, Mr. Chairman and Members.

As Acting Superintendent of what's called the California Medical Facility at Vacaville, Eddie Ylst has managed what is really the largest prison not only in the United States, but the largest prison in the world. In my judgment, he's done so successfully.

As you can imagine, because I get many letters and other communications about the prison from those incarcerated as well as those in the surrounding community, were there evident problems I would certainly have heard of them by now. In fact, the Senate Rules Committee would have heard about them by now.

But most of the communications that I do get strongly endorse the management of that prison, and recently of course, because it is up, the confirmation of the appointment of Eddie Ylst as Superintendent.

A couple of pieces of information that may be useful to you. The California Medical Facility in Vacaville houses some 8,000 prisoners: half of them at the Reception Center Psychiatric Unit Hospital; the other half at the prison, CMF, California Medical Facility South.

1 A second point that would be of interest is that it has
2 the only AIDS treatment facility in the State penal system. As a
3 consequence of that, Acting Superintendent Ylst has addressed the
4 serious and very painful situation with model treatment and
5 education programs.

6 Superintendent Ylst is on track to qualify the hospital
7 for accreditation. The prison maintains a cordial working
8 relationship with the City of Vacaville. Some of the trustworthy
9 inmates work on many community projects, such as stream clearing
10 and park enhancement.

11 What all of this amounts to is that it's a difficult
12 job. There are many new challenges there, and the AIDS challenge
13 is certainly one of them. The sheer magnitude of the prison,
14 which at one point was up to 8200 or 8400 -- Mr. Ylst can be
15 exact with you on the numbers -- is in itself just a tremendous
16 challenge.

17 Those formidable tasks have really been accomplished
18 with a great deal of empathy, of flexibility where that's
19 appropriate, of fairness which is always appropriate, and
20 frankly, toughness and strength where that's required.

21 So, it's unusual to find someone, I think, who is as
22 well-qualified as he is, and I would certainly recommend him to
23 you without reservation and would like to introduce him to you at
24 this point.

25 CHAIRMAN ROBERTI: Thank you.

26 SENATOR KEENE: Thank you.
27
28

1 CHAIRMAN ROBERTI: Mr. Ylst, let me just ask you a
2 couple of questions of interest to me on the AIDS treatment
3 center, I guess.

4 Do you make drugs available to the patients that might
5 help them in the relaxation of the disease?

6 MR. YLST: We make a variety of drugs available, but
7 particularly lately we've been making AZT available, and also the
8 respiratory therapy treatment. And besides that, we have the
9 regular drugs.

10 CHAIRMAN ROBERTI: How do you handle things like
11 recreation or exercise for AIDS?

12 MR. YLST: There is two exercise yards. There is a rec.
13 room and gymnasiums that are available, and education programs,
14 Arts in Corrections, on the AIDS Dorm, and some basic education
15 programs.

16 CHAIRMAN ROBERTI: How often do they get to see a
17 doctor, have a doctor on the premises?

18 MR. YLST: There is a doctor available 24 hours a day.
19 There's one on site actually on the wing during normal working
20 hours, and then there is also contract services available beyond
21 that.

22 CHAIRMAN ROBERTI: What's your current process for
23 identifying prisoners with AIDS, with the virus on the antibody?

24 MR. YLST: The current process is a medical one which is
25 simply, if the doctor believes that the individual may be
26 symptomatic, he may suggest the best be given.

27 CHAIRMAN ROBERTI: Are there any other questions?
28

1 Is there any opposition in the audience? Please come
2 forward.

3 Please state your name and whom you represent if someone
4 other than yourself.

5 MR. MARSH: My name is George Marsh and I represent
6 myself.

7 CHAIRMAN ROBERTI: Okay, Mr. Marsh, please indicate your
8 opposition.

9 MR. MARSH: My main opposition, I had worked for the
10 Department of Corrections from July 1st, 1985, and until I was
11 terminated in October -- October, 1987.

12 During that time, I experienced and was made aware by
13 other employees of many practices which I considered
14 inappropriate. They fall into about three -- three general
15 areas, and I'll try to be concise.

16 The one involved the Department of Corrections and
17 specifically the California Medical Facility's obligation from
18 the Legislature to carry out the Work Incentive, which basically
19 was the idea that inmates would display good behavior, proper
20 attitudes, and they would work diligently in order to have a day
21 reduced from their sentence.

22 What I experienced was that the administration of the
23 Department of Corrections, or at least the California Medical
24 Facility, was doing whatever they could to hamper that Work
25 Incentive law. That is, they were reducing the inmate's
26 sentence, giving him his day for day, when he displayed negative
27 attitudes, poor behavior, and very often just refused to work.
28

1 The second aspect of that were the record keeping
2 procedures on documenting inmates' work times. I found that many
3 of the academic teachers were being told to credit inmates with
4 hours in which they were not working and they were not under the
5 teacher's supervision. It was virtually impossible to discipline
6 inmates as provided by institution rules.

7 A typical example was if an inmate refused to come to
8 his class assignment, the teacher would sometimes go to the
9 inmate's cell to verify that the inmate was refusing to attend
10 class. The typical example of where I would go to the inmate's
11 cell and I would say, "Inmate Jones, are you refusing to come to
12 class?" And he would say, "Look, mother fucker, I ain't coming
13 to class." So I documented that according to the institution
14 rules, which says the he should not get his day for day because
15 he's refusing his assignment.

16 The administration would refuse to support those
17 write-ups. They would question me to the effect of, "Mr. Marsh,
18 did the inmate specifically state 'I refuse to attend my
19 assignment'?" I said, "No, he didn't specifically state that.
20 He said, he stated, 'Mother fucker, I ain't coming to class.'"
21 And so they said, "Then, Mr. Marsh, this isn't a valid write-up;
22 is it? The inmate should get his day for day."

23 SENATOR ELLIS: Mr. Chairman, I object to the language.
24 Could I just ask the witness to please refrain from using
25 profanity and obscenities?

26 MR. MARSH: Yes, I apologize for that. I was trying to
27 make the point of exactly what occurred, so I apologize for that.
28

1 That's one general area.

2 The second general area has to do with the failure of
3 Mr. Ylst to his subordinate supervisors to follow good
4 supervisory practices. And these are numerous, but I'll try to
5 list only a few.

6 When I had complained that -- that the inmates were
7 being credited with time in which they were not working and had
8 that the institution was failing to discipline inmates according
9 to the law, the supervisors began speaking with the inmates in a
10 manner which could be construed as to incite them against me.
11 They were telling the inmates, "Look, we're going to have to be
12 tighter with our record keeping procedures because Marsh is
13 complaining about it, and he's going to people higher up."

14 When I reported this, these matters, and it went all the
15 way up to Mr. Ylst, and then after him up to Mr. Rowland, the
16 Director of Corrections, they refused to investigate the matter.
17 And what I mean by refusing to investigate, I found that they had
18 not interviewed key people who were knowledgeable about these
19 incidents. I then asked for a copy of the investigation into
20 these matters that they said they had conducted and found it to
21 be unfounded. And this was in March of 1987. The only way I was
22 able to obtain a copy of that was by court subpoena about a month
23 ago. So it took about nine months or better for them to even
24 give me a copy of that.

25 I have experienced, as well as other -- at least one
26 other employee, where a supervisor has wrote an erroneous
27 performance evaluation on the employee's work performance. In my
28

1 case, I asked Mr. Ylst to review these matters because I could
2 show that the information was erroneous. He refused.

3 In another case of an employee named Leroy Edmonds, he
4 came with the same problem to Mr. Ylst, saying that his
5 supervisor had placed an erroneous information in his performance
6 evaluation. Mr. Ylst, according to Leroy Edmonds at least,
7 admitted that the information was false, but he was not going to
8 do anything about to to change it.

9 I would emphasize, performance evaluations are very
10 critical in terms of job advancement and promotion and so forth.

11 Another incident involved Mr. Ray Batey, who was also a
12 teacher at the facility, and he was denied -- he didn't
13 satisfactorily complete his probationary period after one year.
14 And part of his grievance or his allegation in his Skelly hearing
15 was that he was being harassed at the work site, that one of the
16 correctional officers said, "I'm not going to intervene if the
17 inmates assault you." And this was stated in the presence of
18 Mr. Tom Randall, another teacher. At the Skelly hearing this
19 information was brought to the attention of Mr. Ylst. And I've
20 talked to those teachers in recent days, and they say that there
21 has been no investigation into that matter at all.

22 The point of all this is that when there are allegations
23 of maybe inappropriate activity by lower level supervisors that
24 are brought to the attention of Mr. Ylst, they're virtually
25 ignored. And I really don't consider that very proper
26 supervisory practices.

27
28

1 Another aspect involves the reason a lot of other people
2 aren't here supporting me is because of the reprisals and
3 intimidation occurring at the facility. An example would be,
4 after I was terminated and I had an SPB hearing about a month
5 ago, one of the teachers that I had subpoenaed to testify in my
6 behalf, Mr. Fred Parker, when he brought the subpoena to his
7 supervisor requesting his appearance at the hearing, his
8 supervisor said, "No, you can't take the time off. If you do,
9 it'll be without pay."

10 Now, Mr. Lawson is the supervisor he brought this to
11 with 15 years of Correctional experience. And he knew very, very
12 clearly that these court subpoenas allow a State employee to be
13 paid for the time. But this was a method of intimidation that
14 the supervisors frequently employ.

15 Again, when this was brought to the attention of
16 Mr. Ylst, it was -- it's simply ignored.

17 There's tons of information, but I think the two about
18 not following good supervisory practices and secondly, of
19 violating the intent of the Legislature as expressed in the Work
20 Incentive law -- let me make this point. When the supervisors
21 would tell me to violate the Work Incentive law, the written
22 letter, I would ask them to place that in writing. And they
23 consistently refused. They said, "This is a prison. We have
24 overcrowding. We need to get these guys out of here as fast as
25 we can, and we do what we want."

26 And my objection is, is that if that is the solution to
27 overcrowding, that should be a legislative decision, or from the
28

1 Governor's Office, in terms of public accountability, because the
2 recidivism rate is so high, and these guys are not working. They
3 are assaultive, displaying improper attitudes. They get out on
4 the streets and they hurt people. It's no minor issue.

5 And if they -- if the administration is going to give
6 staff directions which are in contradiction to written policy,
7 that should be in writing so there's accountability. And they
8 have refused down the line.

9 The very final issue that I object to, and I'll try to
10 be -- I'll be extremely brief on this -- when I began working for
11 the facility in September of '85, I was required to go to a
12 mandatory Sexual Orientation Training at the facility. It was my
13 understanding that from former Governor Brown, he sent down a
14 memo which said that as State employees, you cannot discriminate
15 against people because of their sexual orientation.

16 I had no problem with that. To me, it was an idea of
17 treating other people fairly regardless of their religion, or
18 social values, or whatever.

19 But the mandatory meeting, which was authorized by the
20 Department of Corrections, it uses as its training material a
21 document which says, "Department of Corrections, a Resource
22 Handbook for Sexual Orientation Discrimination," and it's
23 prepared by the Gay and Lesbian Community Services Center of Los
24 Angeles.

25 When I was at the meeting, it was an open forum meeting,
26 and it -- the speaker was highly propagandistic for
27 homosexuality. That is, they were in effect telling the
28

1 employees, as an employee for the State of California, you need
2 to develop favorable attitudes towards homosexuality.

3 I thought that that was highly inappropriate, and I was
4 going back to the early 1960s Supreme Court decisions involving
5 religion and politics in public facilities in which they said
6 it's no part of government to be influencing people one way or
7 the other on Catholicism, or on homosexuality, or on
8 Christianity, or anything else. So I strenuously objected.

9 And this document is the training material which I had
10 to subpoena. Again, it took two years for the Department of
11 Corrections to give me a copy of this document, and it was only
12 with a court subpoena. And when I read the document, I can see
13 why that they were reluctant to give it.

14 Now, the Governor has postured as a person who is
15 neutral or even possibly opposed to homosexuality by his
16 rejection of AB 1. Now, under his nose in the Department of
17 Corrections, they have a program in which it's giving the
18 homosexuals everything that they've asked for in AB 1.

19 I don't have extra copies of this, but I would -- I
20 would urge you to take a copy of this. This is -- it has the
21 Department of Corrections' literature on it, or insignia on it,
22 and it's saying such things as that:

23 "... we need to give up our
24 homophobic culture ..."

25 that

26 "... a fear of differences
27 based on sexual orientation
28 can be and must be unlearned."

1 I'm appalled that a State agency is taking that kind of a
2 position.

3 I have a right to personally find homosexuality
4 offensive, and this goes all the way back in our Western
5 political traditions to Socrates, saying that in free societies,
6 we can't tell people how to think. Now, we can tell people to be
7 fair with homosexuals. I have no trouble with that. But this --
8 this document in their mandatory training program is going much
9 further. It says that a supervisor's responsibility is to help
10 change attitudes regarding homosexuality, and that we need to
11 learn to change prejudicial attitudes.

12 But anyway, I objected to this, and I was harassed. I
13 was trapped in rooms by my supervisor and told that I needed to
14 become more enlightened on homosexuality. I was required to go
15 through this training again on homosexuality.

16 And this is -- these are so -- all these matters were
17 brought to the attention of Mr. Ylst. And there was no
18 investigation into this matter at all. On this homosexual
19 matter, they -- when I raised the complaint, they interviewed
20 Lieutenant Thompson, who was a lesbian who conducted the class,
21 and they interviewed one other person who was a supervisor, out
22 of 300 people, approximately, attending the mandatory Sexual
23 Orientation class.

24 This is typical of their investigations at that
25 facility.

26 The last thing I'll emphasize is that you'd have a lot
27 more people here if it weren't for the fact that this
28

1 institution, it rewards people that keep quiet. It shows
2 favoritism towards people that keep quiet, and it penalizes and
3 takes reprisals against people that speak out.

4 And I ask that at minimum, you know, if your procedures
5 all it, you put off this confirmation vote on Mr. Ylst for at
6 least 30 or 60 days, until you can get to the -- check out some
7 of these -- these serious charges I'm raising.

8 So that's -- I thank you for your time, and appreciate
9 the time you've given.

10 CHAIRMAN ROBERTI: Thank you very much, Mr. Marsh.

11 Would you like to rebut, Mr. Ylst?

12 MR. YLST: We adhere to the Work Incentive law fully.
13 That is the law of California, and we adhere to it locally.

14 We do have an active sensitivity program as it relates
15 to sexual orientation, as it relates to affirmative action.

16 I have never talked to some of these individuals that
17 Mr. Marsh has referred to.

18 CHAIRMAN ROBERTI: Thank you.

19 Is there any other opposition in the audience? Please
20 come forward.

21 MR. NOVEY: Senator Roberti, Chairman, Committee
22 Members, Don Novey, President of CCPOA.

23 Dating back to 1983, I went on television and opposed
24 this man as Superintendent of that facility. Subsequent to that
25 time, I just want to point out a little histrionics for you,
26 we've been able to reconcile and work with Mr. Ylst.

27

28

1 The gentleman that just appeared before me reminds me of
2 the William Bennett-President Kennedy of Stanford debate last
3 night, you know, where is Western history going?

4 In reference to the field of Corrections, having
5 transversed this country, recently returning from Jackson,
6 Michigan, where we've had several of our peace officers killed in
7 the line of duty, and Jackson is the largest walled facility in
8 the nation. Whereas, at CMF, it's the largest prison in North
9 America.

10 We have AIDS victims there. We have hebephrenic
11 psychotics. I don't know if they're on the management side or
12 the inmate side at times, but we're still trying to decipher on
13 that one. We, I think, have a fine staff. We have had a
14 positive interaction between management and, of course, our union
15 and other unions, as well as adequate representation of minority
16 groups as attested, hopefully, by the Association of Black
17 Correctional Workers, and Mexican-American Correctional Workers
18 Association, and others.

19 The man has had an open-door policy. I think that's his
20 saving grace. And I think it's probably the finest one I think
21 any administrator in the Department of Corrections can have.

22 Senator Roberti, you know, we've had our distaff [sic]
23 discussions on other issues historically, but in reference to
24 this gentleman here, we've had a positive open-door policy.
25 We'll be glad to work with the man in the future.

26 Any questions?

27 CHAIRMAN ROBERTI: Very good, thank you. Fine.
28

1 Mr. Novey was, of course, in support. I didn't ask for
2 support.

3 (Laughter.)

4 MR. YLST: Thank you, Mr. Novey.

5 CHAIRMAN ROBERTI: Maybe we'll start this way, who else
6 would like to testify in support? Please come forward.

7 MR. WARE: Mr. Chairman and Members, my name is Jim
8 Ware. I'm Vice President of the NAACP.

9 I've had the honor and pleasure of investigating and
10 talking to about a hundred or so correctional officers and staff
11 just last week. I was down at Mr. Ylst's institution up until
12 8:00 o'clock at night many times last week, talking to all --
13 people of all walks of life, doctors, staff people, and I can say
14 unequivocally this man is an outstanding administrator.

15 On behalf of the NAACP, we find no fault with him.

16 CHAIRMAN ROBERTI: Thank you very much.

17 Next witness. If you can keep it brief, we'd appreciate
18 it; make your point.

19 MS. VASQUEZ: My name is Hope Vasquez. I'm here on
20 behalf of the Mexican-American Correctional Association.

21 I just want to convey our wholehearted support toward
22 Superintendent Eddie Ylst. He has had a tremendous impact with
23 the Hispanic Advisory Committee that is ongoing with the
24 institution.

25 We support him. He has endorsed our conferences, our
26 issues, and we hope to continue to work with him.

27 Thank you.
28

1 CHAIRMAN ROBERTI: Thank you, Ms. Vasquez.

2 Next.

3 MR. CARROLL: Senator, I'm Bill Carroll. I'm the Mayor
4 of Vacaville. I have been serving in that post since 1972.

5 I'm here to speak very strongly for the confirmation of
6 Mr. Ylst. I have had the opportunity to work very closely with
7 him through some very trying times representing my community,
8 particularly as CMF was moving toward that, becoming the largest
9 prison in the Free World.

10 I think the open-door policy that has been spoken of
11 has been carried in spades with the City. I think you have -- I
12 have in the past worked with other Superintendents there, and you
13 have a real gold nugget here, and I can't say anything more
14 strongly than supporting him.

15 CHAIRMAN ROBERTI: Thank you very much.

16 MR. MACIAS: Senator, I'm Danny Macias. I'm the State
17 President for the Chicano Correctional Workers Association,
18 representing well over 1200 members throughout the State of
19 California.

20 We're here in support of Eddie Ylst for Superintendent
21 at Vacaville because of his commitment to the Hispanic concerns.

22 CHAIRMAN ROBERTI: Thank you very much.

23 MR. DAVIS: Senator, my name is Ed Davis. And as you
24 can see, I'm the better looking one of the two.

25 (Laughter.)

26 CHAIRMAN ROBERTI: I'll tell Senator Davis he's met his
27 match.

28

1 MR. DAVIS: I'm the President of the Association of
2 Black Correctional Workers. We're the largest Black correctional
3 worker organization in the United States.

4 Our basic reason for supporting Mr. Ylst goes beyond the
5 obvious qualifications; a number of people have those. It's
6 something Mr. Novey said: it is an open-door policy. And it's
7 also the ability to listen to criticisms that are brought about,
8 and the ability to adopt and to change.

9 This is what we think is very important. We will have
10 differences with him in the future. I hope no one is appointed
11 who is perfect. I don't think that person exists.

12 But his willingness to listen and to adapt and to change
13 when necessary is why we back him, and that's his strongest point
14 in our estimation.

15 For that reason, we do support him.

16 CHAIRMAN ROBERTI: Thank you very much.

17 MS. WILLIAMS: Senator, my name is Donna Williams. I'm
18 the Chairperson of the Asian Advisory Task Force, and also this
19 afternoon I'm representing the Northern California Asian Peace
20 Officers Association.

21 In the past four months, the Superintendent has become
22 intensely interested and personally concerned with the under-
23 represented hires and promotions of Asians at the California
24 Medical Facility. As a result of this concern, he has
25 established an Asian Advisory Task Force, which consults and
26 advises him concerning Asian issues. This is the first task
27 force of this kind in the Department of Corrections and, I
28 believe, within State Government.

1 Superintendent Ylst is personally involved and committed
2 to the success of our group's efforts, and this is demonstrated
3 by his actions and contributions to our group. We strongly
4 believe that we need more leaders like those of Superintendent
5 Ylst, and along with his pioneering ability in the affirmative
6 action area, we believe we'll be able to see positive changes in
7 Asian hires and promotions in State government.

8 Thank you.

9 CHAIRMAN ROBERTI: Thank you very much.

10 MS. VASQUEZ: Mr. Chairman, my name is Bertha Vasquez.
11 I represent the CMF Chapter of the Chicano Correctional Workers
12 Association.

13 I'm here to support Mr. Ylst. I also belong to the
14 Hispanic Task Force Committee, and Mr. Ylst has had an open-door
15 policy on that and listened to our hiring or need for parity
16 there.

17 And I have also worked in the AIDS Unit, and I know the
18 staff has had very adequate training on that work. I've worked
19 there for ten months in the AIDS Unit.

20 Thank you.

21 CHAIRMAN ROBERTI: Thank you.

22 MR. DEALBA: Senator, my name is Dave Dealba. I'm the
23 Chair of the Hispanic Law Enforcement Task Force. The Task Force
24 represents many of the organizations that have testified here
25 just before me, namely: the Mexican-American Correctional
26 Association; the Chicano Correctional Workers Association; the
27 Latino Peace Officers Association; other Hispanic groups; civil
28

1 rights and political organizations which include the Mexican-
2 American Political Association; LULAC; CAFE de California; La
3 Ley.

4 We want to go on record noting our support for the
5 Superintendent and his commitment to affirmative action, and to
6 reaching parity for employment for Hispanics in State government,
7 and specifically within the Department of Corrections and at his
8 institution.

9 Thank you.

10 CHAIRMAN ROBERTI: Thank you.

11 MR. MILES: Mr. Chairman, my name is Jesse Miles. I'm
12 the local Chairperson for the Association of Black Correctional
13 Workers.

14 I'm a 15-year veteran of the Department of Corrections.
15 I've at four different institutions. I've also taught two years
16 at the Academy. I'm a former police officer.

17 Having worked for that many different administrations, I
18 can state that Mr. Ylst is the finest administrator that I've
19 ever worked for, and the Association of Black Correctional
20 Workers at Vacaville supports his confirmation fully.

21 CHAIRMAN ROBERTI: Thank you.

22 Senator Petris.

23 SENATOR PETRIS: I see one, two, three, four, five more,
24 and those that appeared before, six more.

25 My question is, who's minding the store?

26 (Laughter.)
27
28

1 CHAIRMAN ROBERTI: Well, it's a big place. I'm sure
2 there's plenty of people there.

3 Please come forward.

4 MS. KANE: Mr. Chairman, my name is Beverly Kane, and
5 I'm the Departmental Women's Liaison Council Chairperson.

6 Mr. Ylst has supported women within the work force. He
7 has a personal commitment, strong dedication and enthusiasm in
8 terms of women issues.

9 Two years ago, he received a Golden Mike Award by an
10 outside agency, Solano Business Women's Association, for his
11 personal commitment to women-related issues within the work
12 force.

13 Thank you.

14 CHAIRMAN ROBERTI: Thank you very much.

15 MS. SALONGA: Hello, Mr. Chairman and Members of the
16 Committee.

17 My name is Cres Salonga. I'm the President of the
18 Filipino-American State Employees Association.

19 Within the ten years that I'm working for the facility,
20 I recognize that Mr. Ylst is very supportive of us. He's trying
21 to help us to get promoted and he's hiring more Filipinos.

22 And in behalf of the Filipino-American State Employees
23 Association, we are endorsing his confirmation.

24 Another thing is, I'm a member of the Child Care Center.
25 I'm one of the Board of Directors, and he is trying hard to have
26 the first child care center in prison. And he's very supportive
27 of not only the kids, but all the employees.

28

1 Thank you.

2 CHAIRMAN ROBERTI: Thank you very much.

3 MS. CABREROS: Mr. Chairman, my name is Jane Cabrerros.
4 I'm currently the California Medical Facility's Women's Liaison
5 Council Chairperson. I am also actively involved in the planning
6 of the child care facility at the institution.

7 Mr. Ylst has been fully supportive of women's issues.
8 He has an open-door policy. He attends all of our meetings and
9 encourages support of all staff.

10 I'd like to firmly support his confirmation today and
11 that of the Women's Liaison Council of the institution.

12 Thank you.

13 CHAIRMAN ROBERTI: Thank you.

14 MR. RODRIGUEZ: Good afternoon. My name is Martin
15 Rodriguez. I also represent the Filipino-American State
16 Employees Association.

17 I'm here to fully support Mr. Ylst's confirmation.
18 Mr. Ylst came to Vacaville when Vacaville was in great trouble.
19 The inmate population has gone up. The bed space was very
20 limited, and Mr. Ylst has done an outstanding job.

21 Thank you.

22 CHAIRMAN ROBERTI: Thank you very much.

23 MR. VALIZAN: Good Senators and other Senators, my name
24 is Lupe Valizan. I am the local Chairperson for the Mexican-
25 American Correctional Association Chapter of Sacramento, and also
26 the current Chairperson for the Hispanic Advisory Task Force of
27 Vacaville.
28

1 I will say one thing, is that we're the only kind in the
2 State. The gentleman to the right of me, as well as being my
3 mentor and me being his antagonist at times, has been impressive
4 and innovative. He does not agree with me 90 percent or 80
5 percent of the time, but he does participate in active dialogue
6 with anybody.

7 I can state that when we throw stones at each other, we
8 can probably say we both live in the same glass house. However,
9 we're cognizant of each other's, one, respect; two, ideas and
10 concepts and promote them in the institution.

11 Again, I will reiterate, it is the largest institution
12 in the State, but we also have if not one of the most, the most
13 progressive individual in the State. This is -- in other words,
14 the proof is in the pudding in that, number one, we created
15 together the Hispanic Advisory Task Force; number two, he saw the
16 need for the Asians to be employed also, the Asian Advisory Task
17 Force; number three, taken a very large union and entered into
18 dialogue and, again, acted in the capacity of let me work with
19 you.

20 So therefore, I can say with full-fledged -- rather with
21 full confidence the Sacramento MACA and the Hispanic Advisory
22 Task Force does recommend his confirmation. We look forward to
23 dialoguing with him and working with him in the next year.

24 Thank you.

25 CHAIRMAN ROBERTI: Thank you very much.

26 MR. CARDOZA: Mr. Chairman and Members, maybe I can come
27 at you from a little different perspective. My name is Al
28

1 Cardoza, and I'm Sheriff of Solano County. I'm not a Chairman of
2 anything at the present time.

3 As you know, the presence of an institution in a county
4 is sometimes a difficult situation. I must say in the instance
5 case, however, that in dealing with the California Medical
6 Facility and particularly Mr. Ylst, and the interaction that we
7 have on a day-to-day basis, has been very productive.

8 I have had the pleasure of knowing many Superintendents
9 of the California Medical Facility, and I would rate Mr. Ylst and
10 his ability to manage that facility, and his administrative
11 skills, as being at the top of the list.

12 I'm therefore here to appear before your Committee to
13 urge confirmation of Mr. Ylst. He's an excellent person.

14 Thank you very much.

15 CHAIRMAN ROBERTI: Thank you very much.

16 MR. NAIL: Mr. Chairman, Members, my name is Mike Nail.
17 I'm District Attorney of Solano County.

18 Very briefly, our agencies have a very good working
19 relationship, and I'm here to fully support his confirmation.

20 Thank you.

21 CHAIRMAN ROBERTI: Thank you, Mr. Nail.

22 Is there any further opposition in the audience?

23 Do I hear a motion?

24 SENATOR ELLIS: Move the confirmation.

25 CHAIRMAN ROBERTI: Senator Ellis moves confirmation be
26 recommended to the Floor.

1 SENATOR MELLO: Mr. Chairman, before we vote, I just
2 want to express -- not on the candidate but on what has happened
3 at several of our hearings. I guess we have no control over the
4 due process that takes place.

5 Mr. Marsh came up and made statements. I think his
6 actions should be taken up with the State Personnel Board, which
7 I think he is pursuing. But to use this forum here to try to
8 settle a personnel dispute, I think personally, is inappropriate.

9 I agree with Senator Ellis, the language he used was
10 something I've only heard in some other places, but never in a
11 governmental hearing such as this.

12 The reason I'm saying this, I think that this record,
13 there will be a hearing here. He may attempt to use the
14 transcript here in his own case.

15 I just want to say for the record, I cannot reveal this
16 because it's being pulled away from me, but there is in the
17 Senate Rules Committee file, and I guess in their own file, a
18 Confidential Memo that related to the dismissal of Mr. Marsh. I
19 think that memo is well-documented and shows the reason for the
20 dismissal, and also it documented the use of a tremendous amount
21 of obscenity, which I take is sort of a habit that he has.

22 I just want to state this on the record so that in case
23 the transcript is attempted to be used, those who will use it
24 will know that there's some additional documents that reveal some
25 additional information.

26 Thank you.
27
28

1 CHAIRMAN ROBERTI: I think Mr. Marsh will want to come
2 on up.

3 MR. MARSH: May I speak to that?

4 CHAIRMAN ROBERTI: Yes.

5 MR. MARSH: Just on that last point regarding the use of
6 obscenities, because some of the people in this audience, maybe
7 on this panel, have not worked in a correctional environment, in
8 a correctional environment, the Department of Corrections or the
9 Youth Authority, it is mandated that when you prepare reports,
10 you state exactly the language used, regardless of how offensive.

11 So, this is something that the Department is -- has
12 mandated of employees so that there is no misunderstanding of
13 what was stated at a particular time.

14 I agree with the Senator that under normal
15 circumstances, and under ideal situations, the use of obscenities
16 wouldn't be appropriate. But it's something that I've been
17 trained and required to do.

18 So, I'm not contesting that point, but I think you'll
19 find that this is something. When I started working for
20 Corrections, I objected that we had to prepare reports and use
21 the vulgar language very often used by the inmates. And I was
22 told, "No, you prepare your reports. You state, 'and this is the
23 language that's used.'" And this is what --

24 CHAIRMAN ROBERTI: Senator Mello and Senator Ellis feel
25 strongly one way about it.

26 I frankly took your testimony as an indication of trying
27 to reflect the way you heard it.
28

1 So, people hear different things differently.

2 Thank you very much.

3 MR. MARSH: Thank you.

4 CHAIRMAN ROBERTI: There's a motion before us, Senator
5 Ellis' motion.

6 Secretary will call the roll.

7 SECRETARY WEBB: Senator Ellis.

8 SENATOR ELLIS: Aye.

9 SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 SECRETARY WEBB: Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Senator Craven. Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 The vote is four to nothing; confirmation is recommended
16 to the Floor.

17 (Applause.)

18 CHAIRMAN ROBERTI: The next confirmation is Mr. Michael
19 A. Kelley, Director of the Department of Consumer Affairs.

20 Senator Rosenthal is here as well.

21 Before we take Mr. Kelley up, it's 3:00 o'clock. Why
22 don't we recess for five minutes.

23 (Thereupon a brief recess was taken.)

24 CHAIRMAN ROBERTI: We're here on Michael Kelley,
25 Director of the Department of Consumer Affairs.

26 I think we've seen you before, Mr. Kelley. We'll ask
27 you the same question, and that is why you feel you're qualified
28 to maintain this position?

1 MR. KELLEY: Mr. Chairman, Members, my name is Michael
2 Kelley. I'm currently the Director of Consumer Affairs.

3 I'm a career civil servant with over 16 years of State
4 service. I started as a student assistant, working my way
5 through college, progressing step by step through the civil
6 service system, up to my current rank as Department Director.

7 During the course of my State service, I've had an
8 opportunity to work with many programs in State service. I've
9 worked on rehabilitation, aging, alcohol and drug programs,
10 community health services, higher education, retirement systems,
11 and finally, consumer affairs.

12 As a result of working with this diverse group of
13 people, I've learned how to bring together opposing points of
14 view to achieve a common goal and resolve common problems. This
15 particular skill has proven invaluable to me in my current
16 assignment, where I have the responsibility of providing consumer
17 protection as well as regulating the various vocations and
18 businesses encompassed under the umbrella of the Department of
19 Consumer Affairs.

20 Under my direction, I was successful in getting all of
21 the Executive Officers and Bureau Chiefs of the various programs
22 to develop and agree on a common mission statement for the
23 Department that will guide our activities. On the surface, this
24 may not appear like a major accomplishment, but for those of you
25 who have to set goals and priorities for a diverse group of
26 people, I'm sure you can appreciate bringing 40-45 people
27 together and coming out of that meeting with a common goal to
28 guide your activities.

1 Given the structure of Consumer Affairs, it's imperative
2 that a person be skilled on organizational management. The
3 statutory autonomy of the various boards requires one to be able
4 to influence good government decisions without the complete
5 statutory authority to implement them. To do this, you must be
6 knowledgeable on the issues, have foresight, be a leader, be
7 objective, be open, and most of all you must have integrity.

8 I believe that my educational background, combined with
9 my 16 years of practical experience, has provided me with these
10 qualities.

11 CHAIRMAN ROBERTI: Thank you, Mr. Kelley.

12 Senator Petris then Senator Rosenthal.

13 SENATOR PETRIS: May I yield to him.

14 CHAIRMAN ROBERTI: Senator Rosenthal then Senator
15 Petrus.

16 SENATOR ROSENTHAL: MR. Chairman and Senators, during
17 the interim there was a hearing of the B&P Committee, on which I
18 sit, dealing with a number of issues before the consumers'
19 committee, and one of them was the Cosmetology Board.

20 During the course of that hearing, a question came up
21 about the appointment of their Executive Director. And not
22 believing what I was hearing, I asked for and received a
23 chronology of events, minutes of the Board, copies of letters
24 between the Board and Mr. Kelley, and came to the conclusion that
25 something was not right.

26 So, I called Mr. Kelley to find out his response to some
27 of the things that I had seen in the record. I wanted to know,
28

1 for example, whether the Board had the right by law to appoint
2 its Executive Officer. And I still believe that they do, but I
3 would like to ask that question now of Mr. Kelley.

4 MR. KELLEY: The law as I understand it has two decision
5 points. One, the Board of Cosmetology may select an Executive
6 Officer with the approval of the Director of Consumer Affairs.

7 SENATOR ROSENTHAL: That's right, so it gives you rights
8 of approval of their appointment.

9 Have you met with their appointee?

10 MR. KELLEY: I attempted on one occasion that comes to
11 mind in October to meet with their appointee and interview the
12 individual, at which time the individual sat down and indicated
13 to me that she was not aware she was there for an interview, and
14 as such, she asked that the meeting be focused on some other
15 issues that weren't relevant to what was -- I needed to talk to
16 her about.

17 SENATOR ROSENTHAL: Are you suggesting that no request
18 was made of you subsequent to that time to meet with their
19 appointee, to find out whether or not you thought she was
20 qualified or not?

21 MR. KELLEY: They have made several requests for her to
22 meet with me, and upon my calling her and asking, "Do you want to
23 meet and have an interview," she began to lay down some specific
24 criteria that she felt was appropriate for my making or passing
25 judgment on her position. One of those was that she sent me a
26 letter in October that said in no uncertain terms:

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1 "I must inform you that I do not
2 believe you are capable of considering
3 my qualifications for the position
4 of Executive Officer in a fair and
5 unbiased manner, and I ask that you
6 either approve my appointment as
7 recommended by the Board or remove
8 yourself from the approval process."

9 In sense of fair play, I indicated to her that I would have an
10 impartial three-member panel interview her, at which point she
11 disagreed with the individuals that I had indicated to her would
12 be on the panel.

13 From that point forward, I tried to schedule two other
14 appointments, which she cancelled and indicated that she didn't
15 have -- that her priorities were, you know, somewhere else.

16 But as of late, they have agreed, or she has agreed that
17 she will be interviewed by the panel, and they have an interview
18 scheduled for Friday.

19 SENATOR ROSENTHAL: This Friday?

20 MR. KELLEY: This Friday.

21 SENATOR ROSENTHAL: That's something I was not aware of.
22 I'm pleased to hear that.

23 So, you have not refused to either approve or disapprove
24 on the appointment as of this point?

25 MR. KELLEY: That is correct.

26 My stance in this issue was one of open recruitment and
27 giving all individuals an opportunity to compete. This
28

1 particular job pays close to \$60,000; when you add benefits on
2 it, it's close to \$75,000 a year job. And I felt for the sense
3 of fair play and implementing the Governor's affirmative action
4 policy that everyone who was interested in the job should get an
5 opportunity to compete. So my --

6 SENATOR MELLO: Can Senators apply?

7 MR. KELLEY: Well, the way things are going, I'm not
8 sure.

9 (Laughter.)

10 MR. KELLEY: But the point I was making is that as the
11 administrator responsible for answering the calls to the
12 Personnel Board and any of the other constituents that call in
13 and ask about the affirmative makeup of the Department, I'm
14 responsible to ensure that a good faith effort takes place to
15 give all Californians an opportunity to compete for the jobs and
16 open government up.

17 And that has been my sole contention in this whole
18 issue, is to do a good faith effort; give the individuals an
19 opportunity to compete. I have not said that the individual was
20 not qualified. I just said I think there is a process that
21 should be followed for everyone to get a fair opportunity.

22 SENATOR ROSENTHAL: One final question.

23 In your opinion, if you think that there are some
24 administrative problems regarding any appointment by any Board of
25 its Executive Officer, do you think that that information ought
26 to be conveyed to the Board?

27

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1 MR. KELLEY: Yes, and what I have attempted to do in the
2 short time I've been there, as problems come to my attention,
3 whether they be over the phone, mail, I take great pains to let
4 the appropriate Board know what is happening. Because as you
5 know, most Boards meet three or four times a year, and they are
6 pretty much removed from the day-to-day activities. But myself,
7 being there day in and day out, I hear all the complaints. I'm
8 the one that answers the calls from the Legislature as well as
9 consumers calling in and writing in.

10 So, when certain issues come to my attention, I bring it
11 to the attention of the Board, saying, "Here's the type of things
12 that I am hearing. You, as being the policy maker and the
13 supervisor, if you will, over the program, I bring these to your
14 attention so that you may take whatever step you feel is
15 appropriate to remedy them."

16 SENATOR ROSENTHAL: It's my understanding, and just the
17 opposite of what you've just said, that you've indicated to the
18 Board that there are some administrative problems to discredit
19 their choice.

20 It seems to me that if in fact that is your opinion, and
21 I don't question your right to that opinion, that you should
22 elaborate those details to the Board, which they've informed me
23 you have refused to do.

24 MR. KELLEY: Well, Senator, I met with three Board
25 members -- not all at once. I didn't want to violate your Open
26 Meeting Act -- but I did bring to their attention, passing on
27 information that I had heard, and I thought was of sufficient
28 enough concern that they needed to look into it.

1 Upon assuming that job, to give you a little perspective
2 on what had happened, one of the first things that I was
3 confronted with was a formal investigation on the activities of
4 the Board of Cosmetology and the Executive Officer. And that
5 formal investigation encompassed many things related to the
6 person as well as operations of the Board.

7 So, upon getting there, within two weeks' time being
8 informed that there was going to be a change, and still hearing
9 all these problems, I was emphatic that you must take a look at
10 what is happening here and find out if there is any merit to
11 ensure that the Board is running properly.

12 At that point I talked to three of the Board members who
13 were concerned about the selection process. And I said, "My
14 concern is, here's what I'm hearing. I'm here day in and day
15 out. I think they merit your review. I give them to you in the
16 way that they came to me. You handle them in the way that you
17 feel is appropriate."

18 SENATOR ROSENTHAL: I have no further questions.

19 CHAIRMAN ROBERTI: Thank you, Senator.

20 Any other questions? Senator Petris.

21 SENATOR PETRIS: Yes, Mr. Chairman, thank you.

22 I'm interested in a couple of areas. One is the mission
23 of your Department.

24 The Code Section 310 sets out the intent in the Business
25 and Professions Code, which really makes the Director an advocate
26 for consumer affairs.

27

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1 Now, I went through the scenario with your superagency
2 boss, Ms. Chilton. And I objected to her appointment simply
3 because she had devoted her entire professional career in the
4 business world opposing the enactment of legislation for
5 protection of consumers, and devoted a great deal of time in her
6 duties as President of the Chamber of Commerce making speeches
7 that were very hostile.

8 Then the Governor puts her in a position of carrying out
9 the mission. I think that's not a good government approach.

10 Since that time, I've found that my fears were realized,
11 that the Consumer Agency does no longer consider itself an
12 advocate for the consumer. It's been in numerous articles. One
13 of the most recent was the Mercury News that said, "The roar of
14 the lion has been reduced to a little mouse squeak," or words
15 comparable to that. I think it's a failure to carry out the
16 statutory mandate.

17 What I'd like to know is, in your assignment to that
18 particular position, how do you view that office with respect to
19 advocacy for consumer rights, protections against fraud in the
20 marketplace, and so forth?

21 MR. KELLEY: Senator, I strongly support the law and the
22 purpose of the Department of Consumer Affairs.

23 I'd like to read to you what myself along with the other
24 members of the executive team and all the Boards and Bureaus came
25 up with as the mission statement for the Department. And we
26 agreed that this principle would be our guiding light for our
27 activities, and I think you will see from what we say here that
28 we haven't abandoned that approach.

1 "The mission of the Department of
2 Consumer Affairs is to protect the
3 consumer by promoting and advocating
4 the delivery of quality goods and
5 services, fostering fair competition,
6 and informing and involving the
7 public."

8 That mission statement, put together by our group, has
9 been approved by the Agency Secretary as the goal for my tenure.

10 SENATOR PETRIS: When was that?

11 MR. KELLEY: This was done -- I sent her a letter
12 December 1st, 1987, outlining that, and that has become our
13 guiding light.

14 SENATOR PETRIS: How does that differ from the prior
15 mission statement, if any?

16 MR. KELLEY: Well, the big difference is, I've gotten
17 everybody to agree to it in terms of working in one direction.

18 But I don't think it's really that much of a difference,
19 maybe in the way that it's implemented there may be a different,
20 with my knowledge --

21 SENATOR PETRIS: Then why was it necessary, then, in
22 December of '87, seven years after the Governor was sworn in, to
23 have a mission statement if it's not a change in policy?

24 MR. KELLEY: Well, a lot of times, given the fact that
25 we have 35-40 regulatory programs, individuals can lose sight of
26 what their primary mission is. You know, why are they there.

1 I thought this would be a good exercise to get everyone
2 together to understand that I am interested in the same thing
3 they are. And we had a very valuable exchange of information, so
4 we came away agreeing, yes, this is what we want to do. It
5 reaffirmed what we think is in the -- you know, what is in the
6 law.

7 SENATOR PETRIS: I think that's good language, and I am
8 favorably impressed.

9 Now let me ask you, what specific steps have been taken
10 to carry it out? For example, outreach and education to the
11 consumer? Can you cite any particular steps, or programs, or
12 public educational meetings, or communications, or anything, to
13 carry out the goal?

14 MR. KELLEY: One of the things that I have just
15 completed recently is re-establishing communication with the
16 local consumer service officers throughout the State.

17 One of the things that I found upon arriving at the job
18 was --

19 SENATOR PETRIS: Why was it necessary to re-establish?
20 Had the lines been cut?

21 MR. KELLEY: Well, for whatever reason, they were not
22 participating at the level that I felt was necessary for me to
23 get the input from the grassroots level about what is actually
24 happening to the consumer.

25 Here in Sacramento, we may hear about something totally
26 different than what's happening in Los Angeles, Oakland, San
27 Diego.

1 So what I did is made sure that I got the various local
2 consumer affairs officers together, invited them up, meet with
3 them, tell them what I'm interested in doing, and let them know
4 that I'm here to exchange information, and that they can be an
5 information source for me to help identify problems that I either
6 need to bring to the attention of the Legislature or, in my own
7 power and authority, to write letters and to encourage that
8 certain things be done.

9 SENATOR PETRIS: By local officers, you mean within your
10 Department?

11 MR. KELLEY: No, at the county level.

12 SENATOR PETRIS: County level?

13 MR. KELLEY: Yes.

14 We just completed a meeting.-- I think it was the third
15 week in March -- where we had all of the Northern California
16 consumer affair officers invited. I am now scheduling a meeting
17 for the one in the L.A. area next month, in May.

18 SENATOR PETRIS: And are you planning periodic meetings
19 of that sort to touch base in the future?

20 MR. KELLEY: Yes, as a matter of fact, April 28th I will
21 be in your district, meeting wit several of your --

22 SENATOR PETRIS: County people?

23 MR. KELLEY: -- county people and conducting more or
24 less a "get to know me," talking about what the Department is
25 doing, and getting feedback about some of the problems that
26 they're facing in the Bay Area.

27

28

1 SENATOR PETRIS: Have there been any such meetings in
2 the past, prior to your taking over?

3 MR. KELLEY: I can't really speak to that, Senator.

4 SENATOR PETRIS: When were you first appointed?

5 MR. KELLEY: June 11th, 1987.

6 SENATOR PETRIS: And you started those meetings sometime
7 last year?

8 MR. KELLEY: Yes.

9 SENATOR PETRIS: Okay, proceed. Anything else?

10 CHAIRMAN ROBERTI: Senator Rosenthal.

11 SENATOR ROSENTHAL: Yes, I'm pleased to hear the
12 statement about the involvement of locals.

13 Let me just bring you up to date on something that I was
14 directly involved in. There used to be, and there still may be,
15 unfunded, a Consumers Advisory Council, on which members were
16 appointed by the Governor and there were members representing the
17 Legislature, both the Assembly and the Senate.

18 I sat on that committee for a number of years when it
19 would bring to the Legislature information and some position
20 papers on various issues. That was during the Brown
21 Administration.

22 When Deukmejian was elected Governor, the people that he
23 was appointing to that commission were not as indicated by the
24 representatives that were supposed to be on it. And when I saw
25 that was happening, both the Assembly and I, a Senator, went to
26 the Budget Committee and removed their money.

1 As far as I'm aware right now, that money is still not
2 in existence. It may still be an existent body, but they don't
3 have a budget.

4 One of the things I was concerned about is that the
5 appointees, supposedly representing consumer groups, represented
6 Chambers of Commerce and not consumer groups, on the basis that
7 they, too, are consumers. Of course, everybody's a consumer.
8 That wasn't what the intent of that board was.

9 Also, a representative of labor was not somebody who was
10 directly involved with labor, but one who had been somewhat
11 related 15 or 20 years previously to the labor movement
12 someplace.

13 And so, if in fact there's going to be a change in
14 direction in terms of the kinds of persons that will be involved
15 with you, in terms of the consumer advisory group, I might think
16 differently about whether or not it ought to be funded next year.

17 So, I'll be watching to see, you know, the kinds of
18 activities that you're involved in, and to see who might be
19 appointed to that particular board as to whether or not it merits
20 support from the Legislature.

21 MR. KELLEY: Okay.

22 CHAIRMAN ROBERTI: Is there any opposition in the
23 audience?

24 SENATOR PETRIS: I wasn't through.

25 CHAIRMAN ROBERTI: Okay, fine, Senator Petris.

26 SENATOR PETRIS: Along the education lines, there was a
27 big problem in one of the industries, Dry Cleaning. In fact,
28

1 ever since I've been here, they've had always some kind of
2 controversy within that industry, and there've been moves to
3 abolish the Board.

4 In fact, I'm not sure we have a Board now.

5 SENATOR ROSENTHAL: It's been abolished.

6 SENATOR PETRIS: Yes.

7 In 1986, we enacted legislation requiring that the
8 Department take affirmative steps to provide a public education
9 program with respect to dry cleaning services. And I don't know
10 how much has been accomplished under that.

11 Can you give me an update?

12 MR. KELLEY: Senator, if I may, I have my Deputy here
13 who's been directly responsible in taking care of that and making
14 sure that the legislative intent has been carried out.

15 So, if it's okay, I'd like to call up Mr. Cecil to give
16 you an explanation of what's happening.

17 SENATOR PETRIS: I guess you anticipated the question?

18 MR. KELLEY: It's part of being prepared.

19 MR. CECIL: Thank you, Senator.

20 Tom Cecil, Deputy Director for the Department of
21 Consumer Affairs.

22 The measure that you're referring to is Assembly Bill
23 183 of 1986 by Assemblyman Ross Johnson.

24 That bill required the Department to issue an RFP, a
25 request for proposals, to people interested in providing consumer
26 education, industry education, and complaint handling and
27 mediation for a one-year period.

1 Despite what I would say were rather aggressive efforts
2 on our part, we had as I recall, only two entities bid for that
3 contract. After the contract was awarded, the losing party
4 challenged the bid. To make a long story short, it was delayed
5 somewhat in terms of getting off the ground.

6 SENATOR PETRIS: It's still in court maybe?

7 MR. CECIL: No.

8 The contract was awarded, and I think I have the dates
9 approximately correct. I actually didn't come here prepared to
10 answer the question, but June 15th, as I recall, or June 1st of
11 1987 the contract commenced.

12 We ran into a number of disappointments with the person
13 or the company that we had selected, and sometime in December we
14 mutually terminated the agreement. We then recontacted the
15 Department of General Services' legal department to see what the
16 best course of action would be, because there were funds
17 segregated for the purpose. And in about, I think, 3½-4 weeks
18 ago, we relet the contract to the firm that had been the second
19 bidder.

20 So, we are now back under way, and I think substantially
21 more satisfied with the performance we're getting now.

22 For instance, the industry seminars that the first
23 contractor would give had attendance of 4, 5, 6 people. I
24 understand that the first seminar that the new contractor put on
25 is estimated to have in excess of 200 dry cleaners, so a
26 substantial improvement.

27 SENATOR PETRIS: That's fine. Thank you.
28

1 Now, going back to the basic purpose and the mission,
2 does your Department now take positions on consumer legislation
3 that is pending in any given year?

4 MR. KELLEY: Yes, we do bill analyses and submit our
5 recommendation, you know, to the Agency and the Governor's
6 Office, and it's part of the total process for the administration
7 coming up with a position, and we are an integral part of that.

8 SENATOR PETRIS: How many bills of that kind were there
9 last year?

10 MR. KELLEY: I think in this current legislative
11 session, the Department is following close to 500 bills that have
12 some impact, one way or another, in our determination with
13 consumers.

14 SENATOR PETRIS: Did you make a recommendation on every
15 one of them?

16 MR. KELLEY: Yes.

17 SENATOR PETRIS: What percentage has the Governor
18 supported your recommendation?

19 MR. KELLEY: Since many of them took place prior to me
20 getting there, couldn't tell you exactly what the percentage
21 breakdown was, but --

22 SENATOR PETRIS: How about new bills for this year?
23 Just look at this year's bills.

24 MR. KELLEY: New bills, I'd say --

25 SENATOR PETRIS: I'm trying to find out if your batting
26 average is any better than mine on consumer affairs.

27

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1 MR. KELLEY: Well, I'll just say this in regards to the
2 process --

3 SENATOR PETRIS: It's got to be better.

4 MR. KELLEY: -- and my opportunity to give input, having
5 been in government a while and understanding how to make good
6 arguments and what are the appropriate things to do, I think we
7 are doing much better in terms of putting our position forward
8 and making the argument.

9 You'll recall that the Governor did veto the bill that
10 would have extended the interest rate ceiling, or it would have
11 extended the sunset date. It was under my direction, and the
12 Department prepared an exhaustive study, made a recommendation,
13 and the Governor vetoed the bill that pulled it back down to 18
14 percent.

15 That was a major bill as it related to the consumers.
16 They were very happy about that.

17 Another piece of legislation that I was successful in
18 getting my point of view across dealt with the beer barons bill,
19 which dealt with distributorships. And although the Legislature
20 passed it, the input I was getting from the consumer groups was
21 contrary to that. I made a recommendation, had several
22 discussions, and as a result the Governor vetoed that bill also.

23 SENATOR PETRIS: What kind of communication do you
24 establish with the consumer groups around the state, outside
25 government?

26 MR. KELLEY: Well, I invited consumer groups, if you
27 will, to the same meetings that I had the locals participating
28

1 in, the one I conducted for Northern California. I invited
2 Consumers Union, the Western Center on Law and Poverty, and we
3 try to contact everyone who has shown an interest in consumer
4 legislation and let them know that it is an open forum, and I
5 welcome their participation and input.

6 So, I am talking not only to local government, but also
7 to those private, nonprofit entities and assuring them that they
8 have opportunities to give input to me, and I have endeavored to
9 make sure that I have input to the other administrators in State
10 government to ensure that the consumer perspective is at least
11 voiced.

12 SENATOR PETRIS: Are they responding? Are they coming
13 in yet?

14 MR. KELLEY: I've been successful in meeting pretty much
15 everyone I've asked to meet with and getting -- you know,
16 providing some input.

17 SENATOR PETRIS: What do you think the most pressing
18 consumer problems are today? Let's take three areas, the most
19 pressing?

20 MR. KELLEY: One issue that was expressed to me by the
21 group deals with one that everyone is grappling with which is
22 insurance rates and the impact it has on consumers.

23 I've also been informed of their, if you will, the
24 consumer groups' displeasure with the bill to change the base on
25 interest rate -- that the interest rate was computed. I think
26 now it's on \$1,000 18 percent, and there's a bill in to make it
27 \$4,000 at the 18 percent as computed on that. It isn't too
28 terribly --

1 SENATOR PETRIS: What kind of credit? Credit cards?

2 MR. KELLEY: Yes, credit. This is not bank cards, but
3 this is consumer credit.

4 SENATOR PETRIS: Department stores?

5 MR. KELLEY: Department stores, furniture stores and the
6 like.

7 CHAIRMAN ROBERTI: Has the Department taken a position
8 on that bill?

9 MR. KELLEY: We have provided some input on that bill in
10 the Governor's Office as well as the Agency. They are evaluating
11 everyone's input, as I understand it at this time. But I
12 certainly made my comments known to them.

13 And one other item that we're working on that I think
14 would be of interest to Senator Mello deals with the Davis bill,
15 to provide some extra protection to senior citizens. We're
16 finding that more and more often, senior citizen groups are
17 targeted for consumer scams. So we have worked very closely with
18 Senator Davis and his bill that would impose some additional
19 penalties on anyone who has -- that we can prove is purposefully
20 identifying senior citizens as a target group for scams.

21 SENATOR PETRIS: How are you doing in the automotive
22 repair area? Is there a large number of complaints coming into
23 that Bureau that you get to know about?

24 MR. KELLEY: I make it a habit to review periodically
25 all the complaints that are coming in through our Consumer
26 Assistance Lines, as well as I read the reading file on all of
27 the complaints that are answered in my behalf.

1 I must say that there are numerous complaints, but we
2 have to consider the size of the motoring public. And you know,
3 with over 7 million cars, I wouldn't say that the percentage is
4 very great. We do an exemplary job of responding to those
5 complaints expeditiously.

6 SENATOR PETRIS: What kind of power does the Agency
7 have, let's say in the automotive area? If that subdivision
8 investigates a complaint, let's say there's clearly a legitimate
9 complain of fraud by a repair person in a garage somewhere.

10 What power does the Agency have? Can they haul them
11 into court?

12 MR. KELLEY: Yes, we have -- we follow the
13 Administrative Procedures Act in doing any kind of disciplinary
14 action. It can range from a simple suspension to all the way up
15 to criminal action. And we can, in between there, I can assess
16 fines, and there's a due process that the industry has available
17 to them. But it's a wide array of enforcement tools we have.

18 But yes, we can end up with criminal action.

19 SENATOR PETRIS: Where in that chain is the power to
20 fine? Is it in the Bureau of Automotive Repair?

21 MR. KELLEY: No, it rests with the Director.

22 SENATOR PETRIS: Are you asked to exercise that once in
23 a while?

24 MR. KELLEY: Frequently.

25 SENATOR PETRIS: By the Bureau?

26 MR. KELLEY: Yes.
27
28

1 SENATOR PETRIS: What is the maximum you're authorized
2 to impose?

3 MR. KELLEY: If I may check with my legal counsel on
4 that, since they prepare them for me.

5 MR. CECIL: Senator, I think the Bureau, first of all,
6 has its own statutory authority for their administrative fine
7 program, unlike many of the Boards which fall within --

8 SENATOR PETRIS: Can they impose it without sending it
9 higher up? Can they do it on their own in an administrative
10 hearing?

11 MR. CECIL: The normal process at the Bureau of
12 Automotive Repair is that the citation per violation per
13 investigation can go up as high as \$2500, and that is fairly
14 standard throughout the Department with those agencies that have
15 adopted the administrative citation program. There is an appeal
16 process.

17 SENATOR PETRIS: Do those citations normally result in
18 hearings?

19 MR. CECIL: I don't think normally would be correct. I
20 think the vast majority are paid. There have been a fairly --

21 SENATOR PETRIS: The citation has an amount indicated on
22 it?

23 MR. CECIL: That's correct.

24 SENATOR PETRIS: Does the inspector have the authority
25 to do that on the site?

26 MR. CECIL: They have a schedule -- actually what they
27 do, they are cited for a violation, and then upon review by
28

1 headquarters, a monetary fine is established. The licensee or
2 the unlicensed party is notified of the amount.

3 SENATOR PETRIS: Then they can appeal it if they want?

4 MR. CECIL: They can pay it. They can have an informal
5 office conference, and after they have an informal office
6 conference they can appeal it.

7 And they also have judicial relief, especially if
8 they're unlicensed.

9 SENATOR PETRIS: What kind of publications do your
10 various subdivisions now distribute to the public as part of the
11 education program, if any?

12 MR. KELLEY: Certainly our biggest demand is for
13 landlord-tenant. We do a lot of publications in that regard.

14 We have some basic information on how to be a good
15 consumer. Right now we're working with the Contractors Board on
16 a pamphlet that will explain to the licensees as well as the
17 consumers or the individuals how to go about accessing -- or a
18 new program that we're starting, which is arbitration, how it
19 works and how you can be involved in it.

20 We also have three pamphlets that we're working on, and
21 they're at the printer now, that deal with small claims court
22 advisory. We found that with the popularity of shows like Judge
23 Walpner, where he talks about how to resolve disputes, that let's
24 say for L.A. County alone, they get close to 100,000 requests for
25 service on how to deal with the small claims court process. So,
26 in response to that we've prepared some pamphlets that we are,
27 you know, now getting printed and will be distributing in terms
28

1 of how it works, and how to go about collecting. Because that's
2 a big problem. Once you go to small claims court, you get a
3 judgment, but what do you do next? So we've taken the extra step
4 to say here's how you can go about enforcing that --

5 SENATOR PETRIS: What's the distribution? Do you leave
6 them in the local offices, or do they have to write to the State
7 to get a copy? How are they distributed?

8 MR. KELLEY: Well initially, we will be sending them out
9 to the various local agencies that have expressed an interest in
10 them, you know, the small claims advisory program. And then we
11 always make things available upon written request or phone calls.

12 SENATOR PETRIS: Do you spend them to the local small
13 claims courts so that a person coming in to use that court would
14 get a copy?

15 MR. KELLEY: Yes, we're trying to make them available on
16 a wide distribution.

17 So those are some of the things that we're working on
18 right now that are clearly new and different because of the
19 demands of the consumers.

20 SENATOR PETRIS: Thank you.

21 CHAIRMAN ROBERTI: Any further questions?

22 SENATOR ELLIS: Move.

23 CHAIRMAN ROBERTI: Senator Ellis moves that confirmation
24 be recommended to the Floor.

25 Is there any opposition in the audience? Hearing none,
26 the Secretary will call the roll.

27 SECRETARY WEBB: Senator Ellis.
28

1 SENATOR ELLIS: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven. Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 The vote is four to nothing; confirmation is recommended
9 to the Floor.

10 (Applause.)

11 CHAIRMAN ROBERTI: The next appointment is Mr. Chon
12 Gutierrez, Director of the California State Lottery.

13 MR. GUTIERREZ: Thank you, Mr. Chairman.

14 My name is Chon Gutierrez. I am the Director of the
15 California State Lottery, and I'm pleased to share with you today
16 the fact that we anticipate selling approximately \$1,950,000,000
17 in lottery tickets this year; this year being defined as
18 June 30th. That is up \$550 million the prior year, when we did
19 \$1.4 billion.

20 The reason we're pleased, obviously, aside from the fact
21 we did sell as much as we did, is because as you know, the
22 proceeds of the lottery, 34 percent, must go to education. That
23 means that we will make available to education \$714 million this
24 year.

25 We're very pleased by that. We're very happy about
26 that, but we also recognize that it's important to take the dips
27 and valleys out of the amount of money that we give to education.
28

1 The first year we gave education approximately \$700 million. The
2 second year it dropped to 500 million because sales dropped to
3 \$1.4 billion. This year we will re-establish approximately the
4 same level that existed the first year. We're very pleased by
5 that because, as you know, the local school districts have to
6 rely upon a funding source that goes beyond day-to-day.

7 Our objective, therefore, in the future is to establish
8 a steady, modestly increasing responsible amount of money for
9 education every year. Our objective is, therefore, if we did
10 \$714 million this year, is to try to do approximately the same
11 amount next year with, maybe, an increase to reflect the
12 inflationary impact and things of that nature. Our objective, as
13 I said, is to maintain and establish a steady flow of money to
14 education that they can rely on.

15 How are we going to do that? We've sat down as an
16 organization -- the Sales Division, the Marketing Division, our
17 Operations people, our Security people -- and we've identified
18 three principles that we would like to follow as we look to the
19 future in terms of increase of sales.

20 The first principle is that we want to have more people
21 buy our product rather than a small number of people buy our
22 product very heavily. We call that a broadening of the player
23 base. We're all very mindful that these individuals have
24 necessities in life, and that we only compete for the
25 discretionary funds; the amount of money that would otherwise go
26 to movies, or things of that nature.

27
28

1 I didn't mean to offend anyone who represents the movie
2 industry.

3 Secondly, that we are a governmental entity, but we have
4 certain business responsibilities that we have to follow. So
5 therefore, our decisions should be businesslike. They should be
6 mindful of such things as capital investment, return on
7 investment, and things of this nature, bottom line dollars and
8 cents decisions.

9 We have three challenges and three strategic elements
10 that we want to look at as we look to the future. The first is
11 that we want to effectively communicate with our players. We
12 want to explain to them what product we're selling them in a way
13 in which they will continue to buy it. Let me give you an
14 example.

15 If we characterize playing Lotto as the opportunity to
16 win millions of dollars, and people play Lotto, and they don't
17 win millions of dollars, then they stop playing. So what we want
18 to do is offer them reasons for playing Lotto that go beyond
19 simply winning or losing, with the entertainment value, if you
20 will, of picking six numbers and then watching the draw -- albeit
21 Saturday, albeit Wednesday at 7:57, Mr. Chairman, in the event
22 that you weren't aware of the time -- and see if you won. If you
23 won, then we're all very happy for you. But if you didn't, at
24 least you had the opportunity to entertain yourself, if you will,
25 with the one dollar purchase.

26 SENATOR ELLIS: That's entertainment?
27
28

1 MR. GUTIERREZ: Well, my wife used to entertain herself
2 in that fashion. Now that I'm with the Lottery again, she
3 doesn't have that option any more, so in her case that was
4 entertainment.

5 So, how we communicate our product is important.

6 Secondly, how we distribute our product is equally
7 important. As you know, when we started with the Instant
8 product, we had over 21,000 retailers statewide because there was
9 little to no capital investment necessary to set up those
10 retails.

11 When we started the Lotto game, which is a game in which
12 we record data using computers and a great deal of
13 telecommunications equipment, the capital investment necessary
14 there per each store was in excess of \$7,000. And we simply
15 could not afford to go everywhere to make those kinds of
16 terminals available. We unfortunately weren't able to get into
17 the supermarkets, and the California lifestyle is such that if
18 you really want to sell a consumer product, you have to be in a
19 supermarket; you have to be in a shopping center; you have to be
20 in a K-Mart. You have to be in a location that is high traffic.

21 The equipment that we use right now is not conducive for
22 those kinds of retail environments, so we went to look at our
23 distribution network to make sure it's optimized, that we are
24 getting a return on our investment.

25 And last but not least, Mr. Chairman, product design.
26 We offer a scratch-off ticket, and we have lots of loyal
27 customers who love the product. We try to have a price structure
28 that's responsive to their concerns.

1 As you've noticed, we initially started off at \$5,000
2 when we began the games. We went as high as \$100,000 about a
3 year into it, about the time that we were talking, and our
4 players began to express reservations about so much money being
5 given out on the Instant basis and wanted more smaller prizes.
6 We have gradually begun a reduction in the amount of the prize,
7 the top prize on the Instant Ticket. We are now offering for
8 sale at all of about 21,000 locations an Instant Ticket with a
9 \$5,000 top prize -- is that correct? No, a \$10,000 top prize.
10 The next game will be a \$5,000 top prize.

11 So, we are trying to have a product that's responsive to
12 our players. If they tell us they want more prizes, we try to
13 have them.

14 Additionally, Mr. Chairman --

15 CHAIRMAN ROBERTI: How many of the 5,000 prizes will
16 there be?

17 MR. GUTIERREZ: I happen to have that right here with
18 me. We're going to be looking at around 300 of them, Mr.
19 Chairman.

20 CHAIRMAN ROBERTI: That's 300 at 5,000?

21 MR. GUTIERREZ: Yes, 300 \$5,000 prizes in a universe of
22 135 million tickets.

23 SENATOR ELLIS: How many?

24 MR. GUTIERREZ: That is correct.

25 CHAIRMAN ROBERTI: That's 300 fives --

26 MR. GUTIERREZ: Prizes.

27 SENATOR ELLIS: Out of --
28

1 MR. GUTIERREZ: Out of 135 million tickets. The odds of
2 having one of those correct is about one in 450,000.

3 CHAIRMAN ROBERTI: One out of every 450,000.

4 SENATOR ELLIS: Give me a dozen. Will you sell me a
5 dozen of them?

6 MR. GUTIERREZ: We've sold --

7 CHAIRMAN ROBERTI: Is that more frequent than it used to
8 be?

9 MR. GUTIERREZ: Right now --

10 (Laughter.)

11 MR. GUTIERREZ: I'm sorry, I flipped the page. The game
12 that's on the street right now, Mr. Chairman, features a \$10,000
13 prize, and there are 150 of those, and that is the odds of
14 getting that one correct are one in 900,000.

15 SENATOR ELLIS: What is the Big Spin?

16 MR. GUTIERREZ: The Big Spin is a second drawing that we
17 attach to the Instant Ticket.

18 SENATOR ELLIS: I mean the odds.

19 MR. GUTIERREZ: Oh, the odds? The odds of winning
20 anything on it? Of getting on it?

21 SENATOR ELLIS: Of getting whatever is the big one.

22 MR. GUTIERREZ: The odds of getting into the Big Spin
23 are -- they're long; very, very, very long. I'll have to
24 calculate it. Entry to Big Spin, 50 in a game, so that's 90
25 tickets. There will be 90 people that will get into the Big
26 Spin. So that's 90 over a base of 135 million.

27
28

1 I don't have my calculator with me, Mr. Chairman, but
2 that's about one in 10 million? No, that's one million. It's
3 one in a million. It's about the same odds. One in a mil.,
4 about the same odds of winning a \$10,000 prize, Mr. Chairman.

5 CHAIRMAN ROBERTI: But if you buy 10, then it's one out
6 of every 100,000.

7 (Laughter.)

8 MR. GUTIERREZ: Well, Mr. Chairman, if you buy 100,
9 you've just increased your odds by 10 percent.

10 (Laughter.)

11 MR. GUTIERREZ: The odds of winning a major prize in the
12 California Lottery are long. And I think that's sort of the
13 excitement of playing the lottery, that you can win a substantial
14 amount of money.

15 We do not, and like I said earlier, we do not try to
16 sell the fact that you will win if you play the lottery. We sell
17 it more as entertainment value with an opportunity to win some
18 money.

19 We are emphasizing prizes, the smaller prizes, Mr.
20 Chairman, and I appreciate that they're not real exciting: \$1,
21 \$2, \$5, \$10, \$50 prizes. Because what that does is keeps the
22 players interested. They enjoy winning, if nothing else, a \$2
23 prize. Most of the time, at least the players that I talk to,
24 they turn that \$2 prize in and buy two more tickets. But it's
25 the entertainment value that I think we're selling.

26 On the Lotto 6-49, the odds of getting that one correct,
27 Mr. Chairman, if I can anticipate your question, is 30.9 million
28

1 to one. But yet, Mr. Chairman, every darn Wednesday and
2 Saturday, somebody hits it. And it's a 50-50 toss up against
3 somebody winning it, because you see, there are 14.9 million
4 number combinations that can be constructed with -- I'm sorry,
5 Nancy. Nancy told me don't get into numbers.

6 CHAIRMAN ROBERTI: It's very interesting. I want to
7 hear this.

8 MR. GUTIERREZ: There are 13.9 million numerical
9 combinations that can be created by using 6 numbers out of a
10 field of 49. Generally speaking, our players will pick the same
11 numbers.

12 For example, you will tend to pick numbers that
13 correspond with the calendar because you associate them with
14 positive events in your lives, like births of children,
15 marriages, divorces, a variety of different special events in
16 people's lives.

17 CHAIRMAN ROBERTI: The numbers in the 40s aren't used
18 quite as much then.

19 MR. GUTIERREZ: That is correct. That is absolutely
20 correct, Mr. Chairman.

21 And therefore, under a normal situation, you would tend
22 to get a roll, because only 50 percent of all the numerical
23 combinations have a play against them, and that's a 50 percent
24 don't. And we have a random number generation machine that we
25 have individuals, experts in this area, verify every time. And
26 that means that one time we should get hit, and the next time we
27 shouldn't. Well, we tend to get hit, hit, hit, hit, hit.
28

1 So, we're starting to develop a public relations
2 marketing strategy that says, "California's Lotto Players Are the
3 Luckiest Lotto Players in the World." They are simply defying
4 the odds.

5 SENATOR PETRIS: That's because they live in California.

6 MR. GUTIERREZ: That's right.

7 But we do recognize that those odds are so long that
8 there are some people that are not interested in playing a game
9 where the odds are that long to win a prize of \$5 million.
10 They're interested in winning, let's say, a \$10,000 prize, or a
11 \$100,000 prize. So we get a lot --

12 CHAIRMAN ROBERTI: Those are pretty long, too.

13 MR. GUTIERREZ: Those are long also, Mr. Chairman; they
14 are indeed.

15 We are going to be trying to develop new games that are
16 responsive to our players, and that's the last point of the three
17 strategic areas that we're looking at. And we're trying to
18 customize, if you will, a California solution to the lottery.

19 We have interviewed our players and asked them how they
20 feel about picking numbers. Generally speaking, our players tell
21 us they don't like to pick numbers. Numbers are not positive to
22 them. They don't like the process of filling out, like we did
23 when we were in elementary school. Remember the tests we used to
24 take, those computer scoring tests? They don't enjoy that.
25 Perhaps it brings back those memories.

26 In any event, we've asked them, "Well, how would you
27 like to pick three initials?" And so they've responded very
28

1 favorably. So one of the games we're going to be pretesting --
2 and what we want to do as we consider new games, we want to be
3 mindful that there were Edsels invented by the Ford Motor
4 Company, and they were not successful, and a great deal of
5 investment went into it. So what we want to do is, before we put
6 our product out, we want to do a lot of pretesting to try to
7 minimize the risk of a failure.

8 So, we're going to be pretesting a game where you, as a
9 player, are invited to pick three initials.

10 I don't recall your middle initial. I think it's R;
11 isn't it?

12 CHAIRMAN ROBERTI: It's A.

13 MR. GUTIERREZ: David A. Roberti; you would play a
14 "DAR". And if the odds came up -- the odds of you correctly
15 identifying those three letters that we would subsequently draw
16 in a machine of some kind would be 26 times 25 times 24, which I
17 think is about 5,000 and change to one. So, we might offer a
18 prize there of \$2,000.

19 And so, if you're inclined to want to play that game, we
20 want to have a product that's responsive to your desires.

21 CHAIRMAN ROBERTI: I like that one better.

22 MR. GUTIERREZ: Well, you can rest assured, that one
23 will be available.

24 (Laughter.)

25 MR. GUTIERREZ: With that, Mr. Chairman, that concludes
26 my statement. I apologize for taking as much time.

27

28

1 CHAIRMAN ROBERTI: Nice talking to you; nice hearing
2 from you.

3 Senator Petris.

4 SENATOR PETRIS: Do you have people on your staff how go
5 out and make P.R. address to local groups around the State?

6 MR. GUTIERREZ: We do indeed.

7 SENATOR PETRIS: Describing the lottery and pushing the
8 schools, for example?

9 MR. GUTIERREZ: Pushing schools?

10 SENATOR PETRIS: Well, saying, you know, after all, you
11 have to remember that 34 percent goes to schools. And every time
12 you buy -- that's what your t.v. commercials say: every time you
13 buy a ticket, you're helping schools.

14 You don't get into that?

15 MR. GUTIERREZ: No, I do. That's fine -- I'm sorry,
16 that we don't get into that, or I don't want --

17 SENATOR PETRIS: Do they get into that, or do they just
18 talk about the mechanics of the game?

19 MR. GUTIERREZ: We are trying to have a public relations
20 program that tries to depoliticize the lottery. We read those
21 headlines. We don't like the way in which we're being
22 juxtapositioned between the educational community and yourselves.
23 We don't like that situation.

24 There are some people who, because of the way in which
25 the initiative was sold, truly believe that 34 percent of the
26 educational budget is coming from us, which is clearly not true.
27 We only provide 1-3 percent.

28

1 SENATOR PETRIS: I sit on the Budget Committee, and I
2 run into that all the time.

3 MR. GUTIERREZ: It's terribly confusing, and it's very
4 difficult to explain to the public in a clear, concise fashion,
5 that while 34 percent of their lottery purchases goes to
6 education, that that represents about 3 percent of the amount of
7 money that's contained in the Governor's budget. Because, we
8 can't even get into the issue of local property taxes. Those are
9 not generally identified in the Governor's budget.

10 It's very confusing. That's our single most commonly
11 asked question. It's the area that I have not figured out how to
12 address.

13 Let me tell you what I am trying to do to deal with it,
14 though. I've begun a very positive dialogue with Senator Dills.
15 And of course, we know of his interest in this area. I've made
16 an effort and met twice with the representatives of the
17 California Teachers Association, with the representatives of the
18 School Boards Association, with the representatives of the
19 Superintendents Association, and we have this dialogue going,
20 trying to find a way to present our information in a factual way
21 to not only our players, but our nonplayers, too, because we
22 don't want to be a factor in any kind of --

23 SENATOR PETRIS: Your job is to raise the money, and
24 it's the others' job to distribute it.

25 But I think you ought to add the Governor to that
26 dialogue, because frankly, district after district comes in, the
27 State University people come in, others, and we ask them, "In the
28

1 lottery portion of your budget, how are you going to use this
2 money?" And they say, "We're just using it for the ordinary
3 things because our budget's been cut." And in so many areas it's
4 cut, and the public isn't aware of that.

5 It was sold on the basis of prohibiting us from doing
6 that, that it would be extra money, and that's not the way it's
7 been working.

8 MR. GUTIERREZ: Well, let me add another comment to that
9 point of view.

10 Another criticism that I hear a great deal is the use of
11 the word "supplemental". There are some people that perceive the
12 word "supplemental" to imply that there's a base already there,
13 and supplemental is to add to the top.

14 Your point of view is that you don't believe that that
15 fairly reflects the situation.

16 We're mindful of that, Senator, and like I said, our
17 objective is to run the lottery and to try to depoliticize its
18 presence as much as humanly possible.

19 How do you do that when 55 percent of this State budget
20 that you have to deal with every year is in the area of
21 education? We end up getting thrown in there all the time. We
22 wish that we weren't.

23 SENATOR PETRIS: Thank you.

24 CHAIRMAN ROBERTI: Senator Mello.

25 SENATOR MELLO: Mr. Chairman, a couple comments here.

26 First of all, I'm not one of your customers yet.
27
28

1 MR. GUTIERREZ: We're looking forward to you being one,
2 Senator.

3 (Laughter.)

4 SENATOR MELLO: I guess I'm not looking for that kind of
5 entertainment for my own personal reasons.

6 My wife, though, she's been a player a few times.

7 I want to follow-up on what Senator Petris has
8 indicated. In your opening statement you said we're giving 700
9 and some million dollars to education.

10 As you pointed out, it's about 3 percent, but the money
11 goes to the UC system, the State University --

12 MR. GUTIERREZ: Sure.

13 SENATOR MELLO: -- the community colleges, and K-12.

14 MR. GUTIERREZ: Yes.

15 SENATOR MELLO: But going back to the lottery, the
16 lottery prohibited the money to supplant regular funding for
17 education.

18 MR. GUTIERREZ: Absolutely.

19 SENATOR MELLO: So, I get the same thing as these
20 service clubs because I make a pitch for schools. I think we're
21 49th in funding. We're really bad off and have been for many,
22 many years in our support of education.

23 A lot of people out there, when the schools come
24 pleading for help, they think that the lottery's taking care of
25 them, but it isn't. The money, the 700 million, I wish it could
26 go in the classrooms some way where we would not cut back in our
27 amount.

1 So, I think that coming from the lottery, we should give
2 the message the way it is, and that is the money that's going to
3 the schools is not replacing funds that are in the budget. It's
4 merely used, or a lot of it's used for capital projects. They're
5 paving parking lots. In fact, a lot of school districts are
6 afraid to go ahead and put it into the classroom because they're
7 afraid they're going to be tied down to a higher cost next year
8 and the money may not be there.

9 But that's one point. I don't know, but 700 million is
10 a lot of money. I wish it could help kids out more. We may have
11 to try to go to the voters with an issue to modify that.

12 MR. GUTIERREZ: It's an impressive sum of money, but we
13 do not mean to misrepresent it anyway to suggest that it's --

14 SENATOR MELLO: Yes. In fact, there was a bill that
15 didn't get out that said the lottery people ought to be saying
16 exactly the way it is, that the money is not going for education
17 per se. It's going to the schools, but it's used for a variety
18 of purposes.

19 MR. GUTIERREZ: Yes, sir.

20 SENATOR MELLO: The other thing you touched on, and I
21 just want to reflect what I'm hearing is the same thing.

22 I'm glad that you're moving into the smaller prizes.
23 And I talked to some of the members of your Commission, and they
24 said when you offer this big money, you get more play out there,
25 even though the odds are so much against it as you pointed out.

26 What I hear a lot of people saying is, instead of
27 giving, you know, \$20 million, why don't they have more 10, or
28

1 20, or \$50,000 prizes which more people could share in? I think
2 that would be a lot better.

3 MR. GUTIERREZ: Well, we're trying to be -- and thank
4 you, Senator. We're trying to be mindful of that.

5 We don't think we have to eliminate the \$25 million
6 prize, because when we have \$25 million, Senator Campbell buys
7 our product. As you know, he opposed the initiative, and he told
8 me that he now knows his price; it's \$25 million.

9 (Laughter.)

10 So, we enjoyed having Senator Campbell join our player
11 base.

12 But the point I'm trying to make is, we can offer that
13 game. And if you want to play for a different game that has a
14 smaller prize, we want to have that game, too. I don't think
15 it's an either/or situation. It's a matter of just trying to
16 find a common ground to be responsive to our players. And that's
17 very important to us because to ignore them, I think, is to court
18 disaster.

19 SENATOR MELLO: I just wanted to say on a personal note
20 to you, I appreciate the job you're doing out there. It's a very
21 complicated area, and I think in starting up, it was late
22 starting up but once we got it going, it's operated without very
23 many problems.

24 Your long record of serving in the Department of Finance
25 and Economic Opportunity and so forth, I think, is a great credit
26 to you. You're been able to really go out and take on tough jobs
27 and do a great job at it, so I'm happy to support Senator Ellis
28 here when he makes the motion.

1 MR. GUTIERREZ: I very much appreciate that.

2 CHAIRMAN ROBERTI: Is there opposition in the audience?
3 Yes, please come forward.

4 MS. ORTEGA: For the record, I'm Ana Maria Ortega, and I
5 represent myself.

6 And for the record, I have tried for the last six years
7 to correct this problem that I had with Mr. Gutierrez as Director
8 -- Assistant Director of the Department of Finance, and then
9 Interim Director of the State Office of Economic Opportunity.

10 And for the record, I have tried the State Personnel
11 Board, civil rights organizations, civil rights attorneys that
12 are experts in civil rights, Hispanic attorneys that are experts
13 in civil rights, to correct this matter. And unfortunately, it
14 never got corrected.

15 And I would like just to say that I'm the first Hispanic
16 female to be hired at the Department of Finance as a Staff
17 Service Management Auditor. I came in with a 98 test score. And
18 two weeks later, I started being racially and sexually harassed
19 by my supervisor.

20 I would like to read this as a form that I prepared,
21 which is a long history.

22 Senate Rules Committee, dear honorable gentlemen of the
23 Senate Rules Committee, I'm testifying today at your Committee
24 against the confirmation of Chon Gutierrez. This testimony I'm
25 providing is true; it's based on true and accurate accounts of
26 Mr. Gutierrez while Assistant Director of the Department of
27 Finance and Interim Director of the State Office of Economic
28 Opportunity.

1 Mr. Gutierrez allowed a supervisor to racially and
2 sexually harass me and other employees at the Staff Service
3 Management level at the Department of Finance. By ignoring and
4 failing to abide by the laws of the State of California set up to
5 prevent this kind of abuse, Mr. Gutierrez promoted this bigotry
6 by allowing the supervisor, Mr. Allen Flower, to continue as his
7 employee without any questions.

8 My racial and sexual harassments complaint to
9 Mr. Gutierrez went unanswered and unresolved. Instead,
10 Mr. Gutierrez continued to ignore my plea for fairness and
11 equality.

12 As the official representative for the Department of
13 Finance, he refused to allow my the rights afforded in the United
14 States Constitution -- the Fourth Amendment, the Fifth Amendment,
15 and the Fourteenth Amendment -- by not allowing me due process in
16 this adverse action. Mr. Gutierrez refused to allow any
17 alternative solutions to this unjust personal actions that were
18 available to him at that time.

19 Shortly before I completed 14 months of employment,
20 Mr. Gutierrez came over to the small department as Interim
21 Director for the Office of Economic Opportunity and kept
22 Mr. Flower as his Financial Administrative Officer, and promoted
23 him, so that Mr. Flower could continue his pattern of behavior to
24 racially and sexually harass me and other minorities.

25 Mr. Gutierrez then fired me again, as he had done at the
26 Department of Finance. In the same unconstitutional manner that
27 he had fired me from the Department of Finance, his termination
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1 had nothing to do with my job performance, which had been
2 exemplary my entire stay with the Department.

3 Again, I'm not alone. I speak for all Hispanic women
4 who have suffered injustice with the way that this administration
5 will back up a bigot, a racist, a sexist, that confirms these
6 people into position of power to further promote the very evil
7 that we have to fight for this decade.

8 My plea today to you is that Mr. Gutierrez be made
9 accountable for his actions, and that the State of California
10 Senate Rules Committee will be that vehicle to stop this
11 confirmation as well as to make a statement to all minorities
12 that have suffered his injustice as a high-ranking official for
13 the State of California.

14 Thank you very much for this opportunity to speak on
15 behalf of Hispanic women.

16 For the record, my attorney is Nathaniel Colley, Senior,
17 a prominent civil rights attorney, that we had not other choice
18 for the last six years but to take Mr. Gutierrez into court, and
19 we're waiting for a court trial.

20 CHAIRMAN ROBERTI: What exactly did Mr. Flower say or
21 do?

22 MS. ORTEGA: On September 11, 1981, two weeks after I
23 started working for the Department, he called me a "Mexican
24 whore." He called me "a wetback." He told me I could make more
25 money as a prostitute than as an auditor.

26 CHAIRMAN ROBERTI: Than as an auditor?

27 MS. ORTEGA: Than as an auditor, two weeks.
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1 He also said that we had to lower the standards to let
2 minorities into the unit.

3 CHAIRMAN ROBERTI: What was your position at this time?

4 MS. ORTEGA: I was a probationary employee, two weeks on
5 the job, with a one-year probationary period.

6 And I got fired one day before my permanent civil
7 service without due process, without Constitutional rights,
8 without even affording an opportunity to answer to the
9 allegations, which by the way have been overturned by the State
10 Personnel Board on February 4th, 1986.

11 CHAIRMAN ROBERTI: What was overturned?

12 MS. ORTEGA: The State Personnel Board had my case there
13 for ten months, and the attorney decided that even though I was
14 racially and sexually harassed, that that was beside the point.

15 CHAIRMAN ROBERTI: And you had been terminated, I take
16 it, according to their records and for other reasons?

17 MS. ORTEGA: Right, that's correct.

18 Since then, the key witness for the Department of
19 Finance has admitted that she violated the Privacy Act, Family
20 Education and Privacy Act of 1974 by allowing a State Auditor, a
21 State investigator to come into my files at Sac. State and get a
22 copy of my transcript without a subpoena, without probable cause,
23 without even informing me.

24 And the University, now that I have questioned all of
25 this, I've been persistent in trying to remedy the situation, the
26 University in 1987 says that they did not let an Auditor General
27 go into my records, which in fact they did. And they used those
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1 records to dismiss me, which were not only inaccurate, but were
2 inactive and were not current at that time.

3 And the information that I provided to Mr. Gutierrez, to
4 the Department of Finance, before and after, and the record will
5 show since August 4, 1982, I said that that those were my own
6 personal records. There was never any deceitment [sic] on my
7 part to falsify anything or to give inaccurate information to my
8 employer.

9 I made a motion on my record, and I changed it. The
10 minimum qualifications for this job, Senators, is 120 units. I
11 had put 170 units on my application. The Auditor General went to
12 the University and got 153 units, but instead of him conducting a
13 full investigation and saying, "What happened here," he got a
14 transcript that was inaccurate because I was out of the computer
15 at that time.

16 So, they brought that information back to the Department
17 of Finance, to Mr. Gutierrez. And he fired me on that
18 information.

19 After he fired me, one day after, August 24th, 1982, he
20 called my attorney, Carlos Alcala, a civil rights attorney, to
21 say, "Provide the accounting class that you're missing," which I
22 could not provide because I was out of the computer at that time.

23 CHAIRMAN ROBERTI: You were what?

24 MS. ORTEGA: I was out of the computer. I have no
25 control over what the University system did to me at that time.

26 And you get back your job. You'll return. You don't
27 push the issue of race and sex discrimination. And I said,
28 "Fine. All I want is my job."

1 You know, I had a year of harassment.

2 Gutierrez agreed legally, and it will stand up in any
3 court in the land -- the Supreme Court of the land, and the
4 Superior Court of the land -- but it doesn't stand up with State
5 Personnel Board, that he will put me back to work.

6 On December 28, Mario Obledo, who's right there, took
7 the affidavit to him to verify that I in fact I did have my
8 credentials and I did have my degree, and that I wanted to go
9 back to work. According to my attorney, whom I have a tape of,
10 said that, "Ana Maria, Ana Maria, Mario has promised with Chon
11 putting you back to work. It's apparent Finance has gone back on
12 the deal. I'm sending a letter to the SPB Board to set it on
13 calendar."

14 And from then on it was pure misery just to get through
15 State Personnel Board and lose and lose, until he fired me again.
16 After he fired me again, then people started questioning his
17 behavior toward Hispanic females.

18 And I'm glad that the Lottery has a lot of Hispanics.
19 Perhaps it took my \$4 million lawsuit against Mr. Gutierrez so
20 that Hispanics could get hired in State government, especially
21 Hispanic females.

22 And I'm glad that he has recruited Blacks, because my
23 attorney's a Black, and he's a prominent civil rights attorney.
24 And I'm his last civil rights case, and he has never lost one in
25 his career.

26 And it's unfortunate that another Hispanic female has to
27 come and testify against an Hispanic male for his failure as an
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1 administrator to at least implement any other alternative which
2 he could have done at that time.

3 And I asked legally, writing, everything possible, for
4 the Department of Finance, for about nine times to leave me
5 alone, to clear my name, to let me go on, to find another job.
6 And every time those responses went to his attorney and to him.

7 And it's unfortunate that it takes a lawsuit and it
8 takes a civil rights EUC complaint, and another civil rights
9 lawsuit against him for him to answer to his attorneys.

10 This is obviously an obstruction of administration. And
11 I'm the only one that has taken some kind of action against him,
12 but also was because I'm the only one that also has something to
13 lose, that has lost a lot.

14 It has been devastating to my career, my health, my
15 financial situation, my daughter. And how can I go home and tell
16 my daughter, "Get educated. Work hard. Get excellent work
17 performance so a Hispanic male can turn around and fire you, and
18 fire you, and fire you, and hide behind the bureaucracy that's in
19 the State government."

20 Thank you very much, Senators.

21 CHAIRMAN ROBERTI: Thank you, Ms. Ortega.

22 You were first in the Department of Finance, I guess,
23 and then after that you went to work for --

24 MS. ORTEGA: I was at State of Economic Opportunity 14
25 months prior to Mr. Gutierrez getting there. He got there, and
26 on March the 6th --
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1 CHAIRMAN ROBERTI: You went there right after you were
2 terminated at the Department of Finance?

3 MS. ORTEGA: I went to the California Democratic Party
4 as Administrative Assistant for the gubernatorial race under Tom
5 Bradley. And then I went to work for the -- I guess it was the
6 Governor's Office at that time under the State Office of Economic
7 Opportunity.

8 When Mr. Gutierrez fired me, my Deputy Director and my
9 Manager, whom I had been working for for 14 months, gave me
10 excellent letters of recommendation. And if you check, my record
11 performance has always been excellent.

12 The decisions from State Personnel Board -- I have a
13 hearing -- I have played attorney for the last six years. And I
14 have learned civil rights, Constitutional rights, due process,
15 Fourth Amendment, illegal search and seizure, government codes,
16 things that I never expected to learn in this ordeal. My
17 background was finance, accounting, statistics, computers,
18 budgets, management. But my situation with Mr. Gutierrez as
19 Director -- Assistant Director of Department of Finance and the
20 State Office of Economic Opportunity has forced me to learn this
21 and represent myself in the legal system.

22 I have represented myself before three judges, all
23 Republicans, and they all have approved my petitions before them.
24 And next week I have another hearing before a Superior Court
25 judge.

26 Unfortunately, an Hispanic female has to suffer and go
27 through all of this. Mr. Gutierrez, all he has to do is pick up
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1 the phone and have an Attorney General at his service to answer
2 anything.

3 And this is very sad, and it's very unfortunate, but it
4 also has to be brought up, because if it was not brought up, a
5 lot of Hispanic males, a lot of Hispanic people in here, and
6 there's a lot of Hispanics in the community, that's all they want
7 is some equal employment opportunities.

8 And if you let a racist destroy somebody's career, and
9 you let an administrator who happens to be Hispanic approve,
10 condone, and promote that kind of racial and sexual harassment in
11 the workplace that has already been proven in an arbitration
12 hearing, it's already been proven, a Workman's Comp., then I
13 think what we work for, what you Senators work for in affirmative
14 action, equal employment opportunity in government, goes -- goes
15 out the window.

16 CHAIRMAN ROBERTI: Thank you, Ms. Ortega.

17 Mr. Gutierrez, do you want to respond?

18 MR. GUTIERREZ: This is a long history, Mr. Chairman,
19 one that obviously has had a lot of emotional impact on Ms.
20 Ortega, and one that at best becomes very confusing.

21 I joined the Department of Finance in May of 1982.
22 Shortly thereafter, within two weeks of my arrival there, an
23 anonymous phone call was made to our Personnel Section
24 questioning Ms. Ortega's academic background.

25 We had a very clear mandate from our Director, Mary Ann
26 Graves, that we should strive to improve our affirmative action
27 accomplishments within the Department of Finance. There was a
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1 great deal of interest at that time from Members of the
2 Legislature in the Department of Finance specific to affirmative
3 action goals.

4 We were very proud of the fact that Ana Maria was one of
5 our employees. Her supervisor, her Chief of the Audits Division,
6 Richard Cutting, had set up a training program to help her
7 develop her skills so that she could be successful as an auditor.

8 The anonymous phone call, as I said, questioned her
9 academic credentials. The Personnel Section -- which did not
10 report to me at that time, it reported to another individual --
11 came and advised me of that, and advised me that they would be
12 contacting Ms. Ortega to get clarification. They did. Ms.
13 Ortega provided our Personnel shop with a letter from a Registrar
14 at Sacramento State and a transcript from Sacramento State.

15 Since it was an anonymous phone call, the Personnel
16 staff felt that they had discharged their responsibilities and
17 closed the issue.

18 Someone, for some reason that I don't know, made a
19 second anonymous phone call -- I'm assuming it was the same
20 person -- this time to the Auditor General's Hot Line. The
21 Auditor General advised us of that, as is their normal practice.
22 We in turn advised him or her -- I don't recall, and I don't
23 think I ever knew who contacted us from the Auditor General's
24 Office -- we advised them that the matter had been brought to our
25 attention, that we had satisfactorily resolved it, and that there
26 was no issue.

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1 About that time, Ms. Ortega and I met, and she shared
2 with the incident that she just shared with you relative to her
3 supervisor, Mr. Allen Flower, and to one of her co-workers,
4 Mr. Bill Young, where she characterized Mr. Flower's remarks in
5 the same fashion that she characterized them here today.

6 I advised her that as a supervisor, if I was aware of
7 such a harassment or discrimination, that I was as liable as the
8 individual that had perpetu -- had done it. And she said, "Chon,
9 we've worked things out. Allen's remarks were inappropriate, but
10 Mr. Cutting's got me on a training program. Things look good. I
11 think I want to leave things as they are."

12 While I appreciated her remarks at the time, I did not
13 accept them as such, because I ultimately felt that I was
14 responsible to do more than that. I contacted our Affirmative
15 Action Unit, which included two individuals and a Personnel
16 officer, and asked them to come down and meet with me. I told
17 them of Ana Maria's comments to me. I told them of my reluctant
18 -- of her reluctance to want to pursue it further. They advised
19 me that they had similar conversations with her in the past, and
20 that she had indicated that things were improving, that she did
21 not want to pursue the matter further. I advised the three of
22 them that, notwithstanding their comments with Ms. Ortega, I
23 wanted them to go back and talk to her again and make sure she
24 understood that that kind of behavior would not be tolerated, and
25 that she an opportunity to file a complaint.

26 I then called Mr. Flower's supervisor, Richard Cutting.
27 Advised him of Ms. Ortega's comments. He in turn advised me that
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1 he was aware of those, that Mr. Flower had been reprimanded, and
2 that a process had been put into place where Mr. Flower would no
3 longer have any professional relationship with Ms. Ortega.

4 I talked to Bill Young, who was present. He
5 characterized the incident as one of being said in jest. He
6 further said that both he and Ms. Ortega advised Mr. Flower that,
7 whether it was in jest or not, that it was inappropriate. He
8 further advised me that Mr. Flower apologized and never behaved
9 in such a fashion again.

10 As far as I was concerned, the issue has been resolved.
11 But unbeknownst to us, the Auditor General went directly to
12 Sacramento State. They did not accept our documentation but went
13 directly to Sacramento State, went directly to the Registrar.
14 They found that Ms. Ortega's transcripts had been sealed under a
15 recently passed piece of legislation. They used their badge as
16 Auditors to access her files; were able to obtain a copy of her
17 transcript.

18 They scheduled a meeting, which I was not part of
19 because the Personnel people did not report to me. They, the
20 Auditor General, met with an individual named David Willis, whom
21 most of you know, who was in charge of the Personnel functions at
22 that time, along with the Personnel people, and asked to see a
23 copy of her transcript.

24 The two transcripts were compared. It was determined
25 that they were not the same, that the transcript that the
26 Department of Finance had reflected more credits than the
27 transcript that the Auditor General had. Secondly, they advised
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1 us that the individual who had signed the transmittal letter with
2 the Sac. State letterhead on it was not an employee of Sacramento
3 State, and that they have no record of that document having been
4 issued.

5 Based upon that, the Department of Finance terminated
6 Ms. Ortega.

7 During the course of all of this happening, I got a
8 phone call from a very dear personal friend of mine, whom I've
9 known since we were both in diapers. And she said, "Ana Maria is
10 a friend of mine. Could you help her?" I said, "Sure. What are
11 some of the options that are available?" She said, "Well, you
12 know, maybe there's a way in which she can resign without a
13 pejorative finding, and maybe she can go back to school and get
14 her credits, and then she can return back to the Department of
15 Finance or some other agency and pursue her career." I said,
16 "Well let me look into that."

17 Ms. Ortega's attorney at the time was Carlos Alcala,
18 whom I've known for many, many years, ever since he was an
19 advocate for the Civil Rights Office in the Department of Health.
20 He was appointed to that position by Secretary Obledo. He called
21 me and said, "Can we work something out?" And I said, "Well, how
22 about something in this general range?"

23 And then it became evident to us that the charges
24 against Ms. Ortega were so serious that we really could not
25 consider anything other than that.

26 She protested her dismissal. The State Personnel Board
27 heard it. The State Personnel Board made a finding, an extremely
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1 pejorative one. I have one in front of me. I'd rather not read
2 it because it is pejorative, and it's pejorative to Ms. Ortega.
3 I don't want to use this opportunity to do that.

4 She subsequently filed a claim against -- I'm sorry. I
5 did not -- I was not aware any more of her situation.

6 In March of 1984, thereabouts, there was a series of
7 newspaper allegations in the Oakland Tribune regarding the
8 operations of OEO. The Director of OEO resigned. Governor
9 Deukmejian asked me to go over and to bring some order, if there
10 was indeed chaos, and to pursue any appropriate legal remedies if
11 there was indications of criminal conduct. His Chief of Staff,
12 Steve Merksamer, charged me with the responsibility of ensuring
13 that OEO was run with the same high level of integrity as any
14 other department in State government.

15 OEO, as you know, at the time was an extension of the
16 Governor's Office, and all the employees were exempt employees.
17 They were not part of the civil service system.

18 When I arrived there, I made a judgment about the
19 organization and about the people, and took a course to correct
20 what I perceived to be an inappropriate situation. Two
21 individuals were charged with criminal misappropriation of funds,
22 something in the amount of \$67,000. They were found guilty, and
23 I believe one of them actually was sentenced to prison. The
24 other had to do community service.

25 There was a large number of employees who, for a variety
26 of different reason, I thought best that they should not continue
27 in the employment of the State government and as the appointing
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1 power, I caused that they be terminated. One of those employees
2 was Ms. Ortega.

3 The reason I terminated her at OEO is because of the
4 pejorative finding of the State Personnel Board. Secondly, under
5 the merit system, since Ms. Ortega was dismissed with cause, she
6 could not legally hold a position in State government through the
7 civil service system. The only way she could hold a position is
8 through an exempt gubernatorial appointment.

9 Given the charge that I'd received from the Chief of
10 Staff, I did not think it appropriate for me to accept a
11 personnel policy of hiring employees as gubernatorial appointees
12 who could not serve because of their actions as civil service
13 employees. For that reason I terminated her.

14 I don't know what else I can say about it. Ms. Ortega
15 has filed charges against a dozen people involving her
16 experiences at the Department of Finance and at OEO. There has
17 been a number of forums in which she's presented her recollection
18 and perception of the facts, and I really can't comment on those.

19 This is the first time I've seen Ms. Ortega in about six
20 years.

21 MS. ORTEGA: May I add something?

22 CHAIRMAN ROBERTI: Yes, Ms. Ortega.

23 MS. ORTEGA: The allegations that Mr. Gutierrez fired me
24 for the two times were overturned by the State Personnel Board
25 administratively, and they said that I could go back to the
26 Department of Finance and get on the eligibility list again to be
27 hired again, or I could go to the State Controller's Office.
28

1 CHAIRMAN ROBERTI: What was overturned? Was that the
2 pejorative finding of --

3 MS. ORTEGA: Yeah, I provided about 1500 pieces of
4 information in an orderly manner to State Personnel Board.

5 CHAIRMAN ROBERTI: So their original pejorative finding,
6 that Mr. Gutierrez we appreciate you for stating, was overturned?

7 MS. ORTEGA: That's right, administratively overturned.
8 It needs to be legally overturned, but the whole Board saw all my
9 documents.

10 And I stand here before you, Senators, because I have
11 nothing to hide. I have tried everything to work with this
12 individual for the last six years to leave me alone. And the
13 only way I can do is to take him on to court.

14 CHAIRMAN ROBERTI: Is that your understanding also,
15 Mr. Gutierrez?

16 MR. GUTIERREZ: It is not, Mr. Chairman.

17 Ms. Ortega did file charges against: Peggy Trujillo,
18 Patricia Meehan, Ana Oliveres, Teresa Fontenette, Allen Flower,
19 Reid Bristow, Bob Harmick, and myself.

20 Judith A. Myers, from the Appeals Division of the State
21 Personnel Board, did a review. Her recommendation was to deny
22 all the charges. It went before the State Personnel Board in
23 1986. At that time the State Personnel Board concurred with
24 staff's recommendation, but felt that they had the legal
25 authority to now allow Ana Maria to compete in civil service
26 examinations. And they made a decision at that point not to
27 overturn any prior finding, but simply grant her the opportunity
28 to now compete in civil service examinations.

1 That's what I understand happened in 1987. As a matter
2 of fact -- '86? Whenever it was.

3 Walter Vaughn did call, and he called me to advise me
4 that that issue had been raised. And unfortunately, Mr.
5 Chairman, I've got a copy of it, and I asked Skip to make sure
6 that it was available to staff.

7 I don't have it with me, and I can only assume that
8 staff has it. It's a letter. It's a short one that is signed by
9 Chuck -- not Chuck, but the Personnel Officer.

10 MS. MICHEL: It's in your file.

11 MR. GUTIERREZ: Anyway, it's in the file, and I had that
12 point double-checked today, and that's what I was advised that
13 their finding was.

14 CHAIRMAN ROBERTI: Any questions?

15 MS. ORTEGA: Let me interject just one more statement,
16 please.

17 It's unfortunate that the State Personnel Board, 1986,
18 was headed -- their attorney for State Personnel Board is Faith
19 Geoghegan. The attorney for Mr. Gutierrez is Faith Geoghegan.
20 The attorney answering to EUC charges is Faith Geoghegan.

21 I tried through ten months to get to Walter Vaughn, for
22 him to listen to my complaints or my allegations.

23 The word "wetback" is discriminatory. The word "Mexican
24 whore" is sexual harassment. It's in every civil rights case law
25 in the country, and the only ones that have never seen that is
26 Walter Vaughn, who -- his assistant was Arnold Ibarrez, who is
27 Mr. Gutierrez', rumor is, cousin, who is the same person that in
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1 1981, when I was being racially and sexually harassed, I
2 complained to her as Hispanic Project Manager, just to let the
3 racists leave me alone. And when the situation increased at the
4 Department of Finance, I again complained to her.

5 All of this could have been avoided if one administrator
6 could have taken the action. If, in fact, Mr. Gutierrez, who had
7 made the situation, why did Allen Flower go on to State OEO and
8 harass and discriminate five other Blacks that come to my
9 deposition and two other Hispanics?

10 If a person is reprimanded, if a person is talked, and
11 if a person is saying, "Don't do that kind of behavior," unless
12 that person objects -- unless that person's not following orders,
13 he would not continue to do that. But as soon as he got to State
14 OEO, he made remarks to Blacks as "Negroes." He made remarks to
15 Orientals that they couldn't read because their eyes were
16 slanted. He called them "whores." He went on and on to other
17 minorities.

18 And Mr. Gutierrez came in, and without any back up,
19 without any investigation, without anything else, he decided that
20 Ana Maria Ortega could not hold a job for something that he had
21 already agreed to put her back to work, back in 1982.

22 The documents of State Personnel Board are very clear.
23 The transcripts are very clear that we had an agreement with him,
24 and he went ahead and fired ten people.

25 And I made a note to you Senators that none of those
26 were really fired. They resigned and moved on to other
27 departments. I was the only one that had no choice.
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1 This is unfortunate, but it's very true in the State of
2 California right now. I know of five other Hispanic females that
3 have Masters degrees, are highly credentialed, and have had to
4 move, relocate, change, because they found sexual or racial
5 harassment and nothing is done.

6 And the person gets promoted. He'll be making \$86,000 a
7 year as a Director of the Lottery. And what happens to his
8 victims? What happens to other Ana Maria Ortegas in the State of
9 California?

10 The laws are there to protect us, but yet we get no
11 protection.

12 I could give you the names of the Hispanic females that
13 have tried through State Personnel Board to remedy situation, and
14 yet ironically enough, Senators, at the same time I was trying to
15 get due process at State Personnel Board, there was a lady named
16 Jean Crowler that got \$86,000. Jean Crowler was called, "I could
17 just see some red-necked captain having you in his office and not
18 wanting you there." The lady got \$86,000, and the job went to
19 Julio Calderon, who was married to Hattie Calderon, a Governor
20 appointee, who is married to John Geoghegan, Governor appointee;
21 to John Geoghegan is married Faith Geoghegan, who is a Governor
22 appointee's wife who works for the State Personnel Board and is
23 Chon Gutierrez' attorney in my lawsuit.

24 I think it's a sad day in California, and a sad day in
25 Senate Rules when an Hispanic female has to come and tell you
26 that the system has not worked and will not work unless one of
27 you does something to investigate and to say what happens at
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1 State Personnel Board, and what happens to the Chon Gutierrezes
2 that cannot see the facts when they're presented to him. And it
3 has to be six years in litigation before something happens that
4 says, "Ana Maria Ortega, you were absolutely right in September
5 of 1981," by a court decision.

6 SENATOR PETRIS: Question, Mr. Chairman.

7 CHAIRMAN ROBERTI: Senator Petris.

8 SENATOR PETRIS: The quotations you made about things
9 said about the other people, the Black people and the Hispanics,
10 was that Mr. Flower again?

11 MS. ORTEGA: Yes, it was.

12 SENATOR PETRIS: What is his present capacity?

13 MS. ORTEGA: He got -- he got disabled. He had two
14 heart attacks. And Mr. Gutierrez at that time at State OEO
15 retired him medically with full benefits.

16 SENATOR PETRIS: What year was that?

17 MS. ORTEGA: It was 1984. And I had to go through two
18 years of delays, postponements, cancellations in the Workman's
19 Comp. against Mr. Gutierrez, with 18 medical records to verify
20 that I was racially and sexually harassed for me to get some due
21 process.

22 I think it's unfortunate, and I think it's very sad.

23 SENATOR PETRIS: Did you go through the Workmen's Comp.?

24 MS. ORTEGA: Yes, sir, and that decision is against Mr.
25 Gutierrez and Allen Flower.

26 SENATOR PETRIS: Are you now on some disability now?
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1 MS. ORTEGA: Yes, sir. I'm 25 percent disabled from my
2 neck and my back due to the unneeded stress that I had to go
3 through because Mr. Gutierrez could not stop a racist from
4 harassing me at the Department of Finance.

5 CHAIRMAN ROBERTI: After Mr. Flower made his comments,
6 did he continue, or was that the end of it?

7 MS. ORTEGA: I was harassed throughout my entire
8 probationary period at the Department of Finance.

9 When I went to State OEO, he was the administrator. He
10 came over as an auditor, as an auditor in charge by the
11 Department of Finance. And he -- I was an auditor there at State
12 OEO, and I could not -- and I was -- I needed my job. So I asked
13 the OEO officer, John Austin, to please move me away from him
14 because I could not work with him.

15 So, they moved me to the Community Service Block Grant.
16 While Mr. Flower was the administrative officer there, he
17 continued to harass and discriminate all the Blacks. It was
18 predominately all Blacks, and -- but we have a right, too. We
19 have a right to be equally treated. And we have a right not to
20 be called these kind of derogatory names in the workplace, and
21 not to have them approved by Chon Gutierrez, who happens to be
22 Hispanic.

23 That word "wetback" has been the traditional historical
24 discriminatory -- and I'm not a wetback. I'm a U.S. citizen. I
25 am not a Mexican whore, and I certainly could not make more money
26 as a prostitute than as an auditor.

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1 Mr. Gutierrez has always failed, up to right now, to
2 correct or correct that behavior under his supervisors.

3 There was no special training for me at the Department
4 of Finance as he has indicated to you. I came in with a 98 test
5 score out of 300 people.

6 CHAIRMAN ROBERTI: Was there any discipline taken
7 against Mr. Flower at any point?

8 MR. GUTIERREZ: No, Mr. Chairman. That was one of the
9 issues that the State Personnel Board looked into because Ms.
10 Ortega, in effect, charged those aforementioned people earlier
11 with failure to carry out their responsibilities.

12 State Personnel Board found that there was enough
13 evidence to suggest that they had indeed made her available --
14 made her aware of the discrimination process, and that the manner
15 in which Mr. Flower had been dealt with was appropriate.

16 CHAIRMAN ROBERTI: What was that manner?

17 MR. GUTIERREZ: The reprimanding.

18 CHAIRMAN ROBERTI: He was reprimanded. Did it go into
19 his file?

20 MR. GUTIERREZ: I don't know that it went into his file.
21 It was a verbal reprimandation by Dick Cutting.

22 As a matter of fact, I verified that this morning.

23 SENATOR ELLIS: May I ask a question?

24 CHAIRMAN ROBERTI: Yes, Senator Ellis.

25 SENATOR ELLIS: Mr. Gutierrez, have you ever called
26 anybody the names that have been related to us here this evening?

27 MR. GUTIERREZ: I have not.
28

1 SENATOR ELLIS: Have you discriminated against Blacks,
2 Whites, Hispanics, or any other people?

3 MR. GUTIERREZ: I have not.

4 SENATOR ELLIS: Well, Mr. Chairman, I think it's
5 pathetic and sad the things that have happened to Ms. Ortega, but
6 I'm wondering if Mr. Gutierrez is the one that did it.

7 Mr. Flower is not the one to be confirmed. It's Mr.
8 Gutierrez.

9 I empathize and sympathize with Ms. Ortega, but I can't
10 see where that has an involvement with --

11 CHAIRMAN ROBERTI: I lean to feeling the same way you
12 do, except one thing does concern me. And I'm just gleaning this
13 from the information, and I don't know how correct I am, but it
14 appears that the punishment to Ms. Ortega has been a lot stronger
15 than the punishment to Mr. Flower.

16 Now, it just strikes me as a little bit unfair.

17 Now, that's my first impression. Whether that's your
18 responsibility or not, I can't say at this point.

19 I would like personally to read the report of the State
20 Personnel Board. I'd prefer not to have it read openly for the
21 record at this point.

22 MR. GUTIERREZ: I have it with me, Mr. Chairman.

23 CHAIRMAN ROBERTI: We'll take a five-minute recess.

24 (Thereupon a brief recess was taken.)

25 CHAIRMAN ROBERTI: I'm gong to want to read the
26 transcript and want to hold the hearing over until next week. I
27 think that's fair. We will schedule a meeting for next
28 Wednesday.

1 Senator Mello isn't going to be here. Senator Craven, I
2 suspect will still be ill.

3 I'm sorry to hold this over, but I think in all fairness
4 we should read this, so that's what we'll do. We'll see
5 everybody next Wednesday.

6 Thank you.

7 (Thereupon this portion of the Senate
8 Rules Committee hearing was terminated
9 at approximately 5:53 P.M.)

10 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

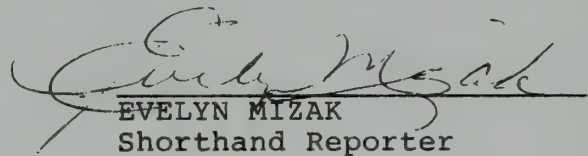
I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

22nd day of April, 1988.


EVELYN MIZAK
Shorthand Reporter

